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Upper Canada. House of Assembly.

IMPORTANT DEBATE

John Smith

ON THE ADOPTION OF THE

REPORT OF THE SELECT COMMITTEE

ON THE DIFFERENCES BETWEEN

HIS EXCELLENCY AND THE LATE EXECUTIVE COUNCIL.

IN THE

HOUSE OF ASSEMBLY, APRIL 18th, 1836.

TORONTO, U. C.

JOS. H. LAWRENCE, PRINTER, GUARDIAN OFFICE.

MDCCCXXXVI.

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DEBATE.

Dr. MORRISON, seconded by Mr. GIBSON, moved that it be—

“Resolved—That the Report of the Select Committee to whom was referred the communications between His Excellency the Lieutenant Governor and the late Executive Council be now adopted, and that the Memorial to the House of Commons accompanying the same be also concurred in and adopted and signed by the Speaker, and transmitted by him to some member of the House of Commons, with the request of this House that he will present the same and support its prayer.”

Dr. MORRISON said that a more exciting and important topic had never come before that House. The whole Province was now agitated by it. In the remarks he was about to make, he should endeavour to confine himself to the main point. The question was, whether or not the advantages of the British Constitution were to be enjoyed by the Province? There were various opinions entertained in the country as to what constituted good government. The House, at the commencement of the Session, had given its opinion in favour of elective institutions; and expressions of public opinion had since been given by the country that this was necessary to preserve the union with the mother country. The important question to be discussed that day was not urged forward by the House, but had been forced upon it by the head of the administration entering into the discussion of the preliminaries of government; and upon him would rest the blame if it should lead to the further inquiry whether the people or the king should elect the governor. The question before the House might be narrowed into this principle: If there is an Executive Council, what duties have the people a right to expect from it? One thing was clear, there had been an Executive Council from the earliest period. But this was strangely denied by the present Lieutenant Governor; although, if he had searched the records of the Province, he would have found that it had existed coëval with the government itself. [Here the hon. gentleman read at some length from the works of Mr. Gourlay.] It would be worth while also to read the whole account of Governor Simcoe's administration. But he would not rest this question upon the bare authority of Governor Simcoe, but would refer to the last clause of the Constitutional Act, and to the King's Instructions, in which an Executive Council was plainly represented as an essential appendage to the Government. But he would contend further, that, laying aside all arguments deducible from law, established usage, and general admission, the very principles of colonial government required

the existence of such a Council to advise on all affairs of the Province. He had often admired that principle in the British Constitution which allows that the King can do no wrong. The meaning of this was, that he was not subject to trial by law; because, being one branch of the legislature, he is and ought to be free in the discharge of his duties. But still there was responsibility in the Government; because the King is surrounded by a responsible cabinet and Privy Council. The necessity for such a body as the Privy Council arose out of the very nature of the Government, although there was neither statute nor common law which provided for its existence, any more than for that of the Executive Council here. In order to avoid despotism, there must be a cabinet ministry liable to impeachment for the advice they give; and as the Lieutenant Governor here is the representative of the King by royal commission, the same principle should hold good, that he can do no wrong, and therefore he should be surrounded by responsible advisers, liable to punishment as in England. Without some such responsibility the Government must be the height of despotism, and the most ardent admirers of the British constitution would most strongly deprecate its existence. If unlimited power being vested in the King would constitute a despotism, is it not equally so if vested in the Governor? He would ask, if the day had arrived when the people would tamely submit to be deprived of those blessings which had cost the blood of patriots? No, he hoped the time had come when they would contend for good government. It would be as reasonable for judges to dispense with juries, whose business it is to inform the conscience of the court, as for a governor to rule without responsible and intelligent advisers. It might as well be said that the Parliament is only to legislate on some affairs, as that the Executive Council is only to advise on some affairs. The very term Executive Council implied that it was to give counsel or advice on all Executive matters. But how does the doctrine laid down by His Excellency accord with this, when he declares that he alone is responsible, and that he will ask advice only when he pleases? To advise was the very essence of their office; and they had as much right to exercise their privilege, as the Governor had to exercise his constitutional powers. It had always hitherto been supposed that the Council was consulted on all the affairs of the Province. That belief had been inculcated in all the public records,—in the Journals of the Assembly, and in speeches from the Throne, and had never before been questioned. Was it to be admitted that Sir Francis Head, an entire stranger in the Province, was to come and upset opinions that had been entertained for fifty years? He (Dr. M.) would appeal to the people whether they would submit to this from an individual whom nobody knew. The long existence of the practice, if nothing else, had made it the constitutional law of the land. (Hear, hear!)

Yes, the first Governor had an Executive Council. The 31st Geo. III., chap. 31, showed that there was to be one. And, if such a Council does exist, the Royal Instructions state that they are to be advised on all affairs of the Province. It was the most odious doctrine that ever was promulgated, to tell the Council at this late day that they are to be limited in their advice to only those subjects on which the Governor may feel it necessary to ask it, and that they are alone responsible to him for that advice. In the year 1799, Governor Preston of Lower Canada took upon himself the same authority, but the Tory Council told him they would not submit to it. He continued to act without their advice, and he had to walk about his business. Sir Peregrine Maitland did the same, and led some persons into crime. The Executive Council told him it was their province to advise him, and that, if he continued to act without advice, they would accuse him, and he must be recalled. Indeed, it was evident that the Governor could no more act by himself than the Assembly could. The privileges of both were defined by law. He would close by observing that Sir Francis Head, in replying to the Address of the City Council, had entirely mistaken the subject of it. He had represented them as dictating whom he ought to appoint as Executive Councillors. But they did no such thing: They said what every constituted body has a right to say—that the present Council had not the confidence of the country. But they nominated no persons in their stead, but left the whole Province to His Excellency, from which to make his selection.

Mr. PERRY commenced by remarking, that, if there ever was an important crisis in the affairs of Upper Canada, for good or for evil, it was the present time. There generally was a time in the history of every country, which, like the "tide in the affairs of men," as it was improved or neglected, exalted that country to greatness and prosperity, or sunk it into insignificance and contempt. That time, in his opinion, had arrived in Upper Canada. (Hear, hear!) For many years we had been struggling to get along in the best way we could, but things had still been getting worse instead of better. At length the time came when it was ardently hoped the prosperity of Upper Canada would be advanced, her grievances redressed, and her people made contented and happy; but, as if some evil genius presided over her destinies, at that very time this question was forced into discussion. People of all classes, Tories as well as reformers, had at different times complained of the administration of affairs in this Province,—it had given satisfaction to none. When reformers made complaint, they were denounced as being factious, as demagogues, revolutionists, destructives, &c.; but they never were told they should not enjoy the blessings of the British constitution;—in fact the contrary was the answer on all occasions: "You have the British constitution, and what more do

you want?" There had been a sort of deception practised upon the country: the complaints to which he alluded had been mostly directed against the Executive Council; they had to bear the odium of all the unpopular acts of the Lieutenant Governor, and they had heretofore been prudent enough to keep up the delusion, knowing that the matter would not bear the light of investigation. Who, he would ask, had brought up the discussion of this question? Was it the people, or the Council? No: he would say in his place, without fear of successful contradiction, that it was Sir Francis Bond Head. (Hear!) He had, to use his own emphatic language, "dragged it into day-light." What did he come here for? Avowedly for the purpose of redressing the grievances of the country; for he tells us in one of his popular appeals, "the grievances of this Province must be corrected,—impartial justice must be administered; the people have asked for it—their Sovereign has ordained it. I am here to execute his gracious commands." Well, what did he do when he came here? He sent for the Hon'ble Robert Baldwin, and he told His Excellency in plain simple language which could not be misunderstood, that, if he took office, it would be to advise him as a cabinet minister advises the King. Doctor Rolph told him the same thing. But did His Excellency tell them, before they went into his Council, that he could not accede to nor accept of their services on these terms? No; but urged them to take office, at the same time telling them that they would have a better opportunity to discuss that question in Council. It seemed he wished to get them into his Council that the question might be "dragged into day-light," relying on his abilities as a writer to carry him through in writing down that great constitutional question in this Province. When they, with Mr. Dunn, consented to take office, he wrote a note to them to be read publicly in the House of Assembly, saying that they had done so free and unpledged; but the note was not forthcoming till the day after they were sworn, notwithstanding he tells the country, in one of his popular replies, that it was delivered to them before they were sworn into office—just as he tells many other things—and then it was altered from the draft agreed upon at the time they were sworn; thus stooping to duplicity in order to get them into the Council, knowing that they were opposed to his principles. Having thus got them in, he proposed that no business should be done till the question was discussed between him and them, and they each should understand their relative duties. But did he do so? No, he went on administering the government as if there was no Council, making appointments to office, without coming to any decision with his Council; and seeing this they resigned office like honest men and gentlemen,—not only the new councillors, but also the three old members, who were generally thought to belong to the old tory school. They drew up a formal request to His Excellency, representing their

views on the question at issue between them; which was never intended to be made public, as they took all precautions to keep it secret,—they even swore the junior clerks of the office to secrecy, and they went up to him in a body and read it to him. He might have told them in answer, ‘Gentlemen, I find the practice of my predecessors different from what you claim, and I will submit the question to the decision of His Majesty’s Government.’ But did he do so? No, by no means; but like a tyrant he told them, ‘What you have written you have written; you have put your foot in it, you must now retire from your principles or from my confidence.’ Immediately he got it put into print for circulation throughout the country, (he must get credit for good manœuvring;) and thus he has been the cause of dragging the question before the country, and if any evils arise from it he must take the consequence. If the people be aroused to discuss questions of government, upon him must fall the blame. No doubt His Excellency never thought of such consequences following; or if they did follow, that he could put them down as he would the clamours of the Kentish paupers. But he would find himself mistaken; the people of Upper Canada were British subjects who understood their rights, and would not submit to be deprived of them by Sir Francis Bond Head or any other Francis. The question now before the country was not whether we should have a new constitution, like the United States; no, but whether we should have the British constitution administered in all its blessings and advantages, as Governor Simcoe promised us; or whether we should have all its evils,—pensions, high salaries, established church, rectories, &c.—without any of the advantages attending it? It was admitted by Sir Francis himself, that if the King was here he would require an Executive Council to advise him. And was it not most ridiculous and absurd in His Excellency to set himself above the King, to proclaim that he was all-wise and all-powerful, and required no assistance in the government of the country? If it was necessary for the liberties of the people that the King, whose interests were identified with theirs, should have this check over him, was it not much more necessary in the case of a captain of the Waggon Train or a commissioner of Poor Laws, who had no other interest in this country but the few paltry pounds he put into his pocket while he was here? The Council claimed nothing but what was admitted in England; not one of the editors in the Province said they did; he knew His Excellency said they did—as he said many other things which it would take more than his word to make go down as truth. (Hear, hear!) His Excellency says, the constitution of this Province ordained no such absurdity as an Executive Council; but the latent intention of His Majesty to create a Council was soon made known by the King’s Instructions. He (Mr. P.) would like to know what he meant by the word “soon,” for it was not till 27 years after the passing of the 31st Geo. III.,

cap. 31, that the Instructions which he sent down to the committee were transmitted to this country,—they were dated in 1818; but that was of no consequence, for he would say with his hon. friend, that if neither the Constitution nor the Instructions said one word about an Executive Council, it would, notwithstanding, be required by the form of government. There was no such thing in the constitution of England, but it had grown out of necessity. The British government was a government of three branches. With the King rests the executive branch, in whom there must of necessity be a great deal of power entrusted, such as making war and concluding peace, entering into treaties, the power of life and death, &c. &c.; and there ought to be some check upon the exercise of such power. What was that check? It was the Cabinet Council, the bulwark of the rights and liberties of the country. Talk to Englishmen of resigning the control they possessed through a Cabinet Council having the confidence of the House of Commons, and you might as well talk to them of resigning their hearts' blood: yet there was not a word in the constitution or laws of England which said that the King should be advised by his Council. Was not such a check as necessary in this country as in England? It was even more necessary; and the Council should be responsible to the people for reasons which he stated before,—the Governor having no permanent interest in the country. But His Excellency not only says that the constitution ordained no such absurdities, we would be ruined if we had it,—yes, it would be the ruination of the country; and, in fact, that it would be unconstitutional for the Governor to advise with his Council. And then, notwithstanding, he says, the constitution ordained no such *absurdity* as an Executive Council: he tells us again, that, to supply his want of local knowledge, the constitution has *wisely* provided an Executive Council. (Hear!) Never in his (Mr. P.'s) life did he hear such a mass of contradictions as His Excellency had put forth in his various documents. He might just as well say that the House of Assembly should not legislate upon all matters of the Province, as that the Council should not advise upon all its affairs. The Governor admits that if he stood in the place of the King he would need a Council; but he says he is only the minister of the Colony; yet, in the Instructions to which he appeals, the Government of this country is called in five different places "your Government." And he has a discretionary power: he could declare war. (Hear!) Yes, he could; and he calls parliaments and dissolves them at his will and pleasure: it is therefore necessary that he should have a council to advise him upon those important matters.

Those who took a part in the debate which took place in the Imperial Parliament on the passing of our Constitutional Act, well knew that it was part of the constitution of England that a cabinet council should exist, and they must have intended, when giving to

Canada "all the forms," yes, "the very image and transcript of the British constitution," that there should be a cabinet council to advise the Governor upon all the affairs of the province; and it would be found that this was their purpose, both from the Act itself and from the language of all public documents from that time to this. Governors Simcoe, Hunter, and all others down to this day, acknowledged the principle, although they found it their interest to deny it in practice. And so says Lord Stanley, who was not a reformer; and the Constitutional Association of Quebec, who were not reformers, but tories, set out by saying in their Declaration, that there should be an executive council to advise the Governor on all the affairs of the province. And he had no doubt but if a question had been moved in that house for an elective legislative council, and the present resolution was moved in amendment, it would be supported by all the tories in the house, even by the Sol.^r General himself. (Hear him!)—[The hon^{ble} gentleman here read some extracts from the report of the Canada committee of the House of Commons, which was drawn up by Mr. Stanley.]—It must be conceded that the Governor takes advice of somebody, and if not from his council it must be from secret, unsworn, and irresponsible advisers. Was there a man in Upper Canada who wished such a system pursued? Did even the tories desire it? for it must be granted that if persons were allowed to advise him in that way, they would feel no restraint, but would say any thing true or untrue that might suit their purpose. No one of any party was desirous of the welfare and prosperity of Upper Canada who wished the government to be administered in that way.

The Governor says the Council take an oath of secrecy, which to his mind appears to be an oath of non-responsibility to the people. But was it not the same as the oath taken by the King's Council in England? The very same; it was an old oath; the King's Council were sworn to secrecy, and yet His Excellency admitted they were responsible to the people. (The hon. member read the oath.) The very oath itself bound them to give advice upon all matters of the government; and when they were thus sworn to give the Governor their best advice upon all matters which they thought was for the peace, welfare, and good government of the Province,—was it just, was it honourable, to bring the charges against them which had been done in His Excellency's appeals to the people in the shape of answers to public addresses? His Excellency further says, it would not only be unconstitutional but it would be inexpedient that the government should be administered here as it is in England, and men could not be found properly qualified to take office as often as a change would make it necessary. Now, he (Mr. P.) would say that Upper Canada contained within itself men as well fitted for all the purposes of good government as any other country in the world, and who would lose nothing in comparison with the statesmen of any nation; and he must

say, it was not becoming in His Excellency to speak so contemptuously of the people of Upper Canada; and not only of them, but also of all the Englishmen, Irishmen, and Scotchmen, who had emigrated here. But it seemed he was the only man fit to administer the government. Again he says, that if it was administered as was proposed, it would fall into the hands of a few dominant families at Toronto. (Hear!) What had he done to take away the power of the family compact? Nothing; he took his new council from those very men who had "built and feathered their nests in the branches of the tree of abuse." He told the House that when he named his council he thought they would be the most acceptable men to the people of Upper Canada. Was there a man in the country who believed that when he penned that declaration he himself believed it was true? But that was nothing singular, for he kept men in his council who had convicted him of deliberate falsehood. When he was asked by the house whether a certain document was in existence, he replied it was not; but Mr. Sullivan, when examined before the committee, said there was such a document, and that it was drawn up by his Excellency himself and executed in the council chamber; and Captain Baldwin said the same: they only differed about who suggested it. Mr. Sullivan said he did, but Captain Baldwin said it was Mr. Elmsley; yet he still kept this very Robert Baldwin Sullivan in his council. Could any one believe that 57 rectories would have been established in Upper Canada, contrary to the often expressed wish of nineteen twentieths, if not ninety-nine hundredths, of the people, if the government was administered by the advice of a Council responsible to the people? What use was it to the people of this Province that the Governor was responsible to Downing Street? Suppose he appointed Sheriffs and other important officers who would exercise their power to oppress the people, what redress could be had? for it must be proved, to sustain a charge against him, that he was actuated by improper motives; but this it would be difficult, if not impossible, to do. Such responsibility was all a "bubble," and His Excellency had better been writing about bubbles than about such responsibility. How could a case be made out against Sir John Colborne for setting apart 57 rectories last year contrary to the almost unanimous wish even of the last tory House of Assembly? The hon. and learned Solicitor-General said, the other day, that he (Sir John Colborne) was compelled to do so by the Constitution. That was not the case; the constitution authorised but did not compel it to be done. Because the constitution authorised the Assembly to stop the supplies, was it to be argued that they must do so? How could Sir John Colborne be impeached for withholding from the House of Assembly important information relative to the revenue, when the Everlasting Salary Bill was under consideration? Instead of being impeached or turned out, he actually made his boast of it and was approved of. And one of the answers of His Excellency,

Sir F. B. Head, to the House was enough to impeach him ; for, at the very time when measures were taking in the Parent State to suppress Orange Societies, His Excellency tells the Assembly he will take no step to suppress them in this country : That very answer showed not only that he had no regard for the wishes and feelings of the people of Upper Canada, but also that he had none for the wishes of His Majesty's Government.

His Excellency says it is better that the people should apply to him for redress of their grievances, than to his Council. Well, he (Mr. P.) need not go back to the case of Mr. Francis Collins, the destruction of Mr. McKenzie's printing office, &c. ; he would say nothing of these bygone matters, but come at once to His Excellency's own administration,—and what would be found ? There was a gentleman who was well qualified to be at the head of the office which he had long been in as its chief clerk, and he had applied to the Governor for it, backed by such a recommendation as he might well be proud of, and which few indeed could boast—a recommendation signed by men of all parties and all classes, in the House of Assembly, the Legislative Council, and elsewhere, (he referred to Mr. Radenhurst ;) but did His Excellency give him the situation ? No. And when the Assembly subsequently addressed him to inquire whether the office was filled up, plainly insinuating their wishes in regard to Mr. Radenhurst, he did not even mention his name in his reply. And did not he connive, in the most disgraceful way, to prevent Mr. McDonell being promoted to the colonelship of the regiment which by rank he was entitled to ? And was there not a young stripling of a boy taken out of Peter Robinson's office the other day, and made collector of customs in Prince Edward, as if there was not a man fit for the situation in that country ? If these things were appealed against, what redress could be got at the Colonial Office, where one man was out and another in while the complaints were on their way there ? Look to the removal of the two crown officers, which was done to the great joy and satisfaction of the people of Upper Canada, and see how, by interested misrepresentations, they were re-appointed,—the one to the Chief Justice of Newfoundland, and the other installed in his former situation. Suppose His Excellency should appoint a man to be a judge of the King's Bench, with slender qualifications as to character and still slenderer talents and knowledge of the laws, and he should, either from his ignorance or wickedness, sacrifice a man's life. How was redress to be obtained ? Then, there was the case of William Forsyth of the Niagara Falls, whose premises were invaded and whose property destroyed by a military force by command of the Lieutenant Governor ; he applied to the Colonial Office after seeking in vain for redress in this country, but had not obtained justice yet, nor was there any more probability of his getting redress than there was years ago. This responsibility to Downing Street was of no practical use to the people of this coun-

try, and therefore the necessity of a responsible Executive Council to advise upon all matters relative to the government of the colony.

His Excellency told the House that he was preparing remedial measures for the consideration of his Council. What, he (Mr. P.) would ask had become of them? he would like to know where they were; His Excellency had every opportunity to bring forward his remedial measures, but not one of them had made its appearance; on the contrary, there was not a step he had taken yet, that has given satisfaction to the country; and notwithstanding all his professions of coming here to "root out the tree of abuse," we are just where we were,—he had done nothing but dismissed one Council and appointed another. He says he has followed in the same track of other Governors. He (Mr. P.) denied it. His Excellency told them, there never was an Executive Council till 1818, but he did not deny, that other Governors had an Executive Council before that time, and thus he contradicted himself. But saying nothing about that, he would ask, what was the use of recalling Sir John Colborne, and sending him, if he was to follow in the course of other Governors? He admits there are certain families who have actually grown rich upon the abuses of the Government, so that agitators have subsisted by exposing them, and therefore, there must have been some use in recalling Sir John Colborne and sending out Sir Francis Head; but if he intends to do just as others have done, he (Mr. P.) must say, that of the two, he would prefer Sir John Colborne; indeed they should never be named in the same day. (Hear, hear, and laughter.)

The very state of our affairs in a country blessed by Providence, with so many natural advantages, proves that there must be something wrong in the administration of our Government; and he would maintain, that it became the Representatives of the people, after the question had been "dragged into day light" as it had been, to support the principle of responsible Government, and if it had not hitherto been introduced to the country, to do it now, for the interests of the country required it. In doing so, they did not seek for any change in our Institutions, but merely to enjoy the same blessings as our fellow-subjects in the Mother Country. He further maintained, that it was their bounden duty to use all constitutional means, to obtain these desirable ends. What could they do? In the first place, they could stop the Supplies, and in the next place, appeal to the King and Parliament at home. It was admitted on all hands, that they might withhold the Supplies; but it might be said the time had not yet come, when it was proper to do so. In the name of God, when would it come? It might be said that in England the supplies have not been withheld in times of great agitation. He would admit it. But why? Because the majority of the Commons always rules the Ministry. He was aware that many scare-crows would be held up, but he was of opinion, notwithstanding, that this was the time.—

Perhaps it would be said that we ought to tell the Governor what we intend to do. But the House had been as moderate as men could be, under their circumstances. They intimated, in their address to the King last year, their intention, and the only remaining question was, whether the right time had arrived. He believed the House would not be doing its duty if it did not now take a firm stand; when the Constitutional rights of the people were invaded by force and violence, when the Governor tells them that they cannot have the British Constitution, and thus attempts to strip them of their birthright.— Under such circumstances, should the House grant the supplies, it would betray its trust. When the new Council was formed by the addition of known reformers, it caused universal satisfaction. But for what purpose was it formed? Merely to be a screen for Sir Francis Head,—a mere delusion. When that Council was dismissed, the House went up to the Governor with an Address, expressing their regret that such a step had been taken. They afterwards passed resolutions declaring their want of confidence in the present Council. But what was the result? The Governor would not dismiss them but he derided the people, telling them that *he* had confidence in his advisers. Why, it would be committing political suicide, to grant the supplies under such a state of things. Perhaps he would be told that if the supplies were stopped, the Governor would refuse the contingencies. Well, let him refuse them. He was addressed for £2,000 several days ago, and was to give an answer to-day at 12 o'clock. What it was he did not know; but had little doubt but it was a refusal. It was also reported by some of his satellites that he intended to shut up all the public offices. Let him do so; if he thinks it will advance the interests of the country or the purpose for which he was sent here, let him do it. Of course he had the power in his own hands if he pleased. The farmers of the country were independent of him,—they could “shear their own fleece and wear it.” He would say here in his place, that if the supplies were stopt, and his Excellency did not dissolve the House, it would be a clear admission that he was aware the country did not go with him. The Executive Council were bound by their oath to advise him to dissolve the House—to send home those demagogues, and get men who would go with him. He trusted that day would decide the question whether the supplies were to be stopt or not; and if they were, let His Excellency come down and thunder his cannon in their ears, dissolve the House, and see what the consequence would be. Let him denounce us as traitors to the interests of the country, betrayers of the trust reposed in us by our constituents, and send us back to them again, and ask them whether they approve of us or not. The whole course of His Excellency, not only on general matters but in particular acts, was to be condemned. He had interfered with the privileges of the House of Assembly, in saying he was surprised it should address him on the subject of the present Council till the

Committee had reported. And does he not speak of this matter most freely to members of the Assembly, and to private persons out of doors? He tells them, 'The House of Assembly has got the pig by the wrong ear,—they have got hold of the stick by the wrong end.' Many names are already in his black book; my name, I am told, occupies a very conspicuous place there. And did not he influence officers high in His Majesty's service to come to this House and pilfer that very Report from the table, in order that he might see it and be able to shape his course accordingly?

If ever the time could come to stop the supplies, it was now. Had not every step of the Executive Government been against the interests of the country? Look at the 57 rectories; and instead of that number there would soon be 444, as the Solicitor General wished there was the other day. If the House did not take a stand now, they would soon have no privileges to guard, or none worth contending for. He recollected when Mr. Boulton refused to give evidence before a committee of the House, he was brought to the bar and received a lesson from the Speaker; and he afterwards turned out one of the greatest sticklers for the rights of the people in the Assembly he (Mr. P.) ever saw. And he had no doubt but Sir Francis Head, when he was broken down from his present haughtiness, would be a useful Governor to Upper Canada, and as great a stickler for the privileges of the House of Assembly, as Mr. Boulton was. He was desirous of moving the following amendment:—

"That this House regards it as one of the brightest features and most important attributes of the British Constitution that the head of the Government is assisted in all its affairs by the advice of known and responsible Councillors and Officers who possess the confidence of the people; and that the people of this Province had imparted to them the same form of Government by the British Statute 31st Geo. 3rd, chap. 31st which, in the memorable language of the revered Simcoe, 'established the British Constitution and all the forms which secure and maintain it in this distant country,' and 'singularly blessed this Province, not with a mutilated Constitution, but with a Constitution which has stood the test of experience and is the very image and transcript of Great Britain.'"

Let any man who pretends to be for the Constitution of the country, vote against that proposition; but whatever became of the amendment, he hoped the original resolution would be adopted, that the country might know the Report had the sanction of that House.

MR. McNAB said, that before entering into the discussion of the important question now before the House, and which had been so unfairly kept from the country, he would endeavor to remark upon what had fallen from hon. gentlemen who had spoken before him. He expected that the hon. and learned member who introduced this matter, would have furnished the House with something like authority for the principles he advocated; but the only authority he adduced, was that of Mr. Gourlay's opinion. The whole proceed-

ings on the part of those who called themselves Reformers, in regard to His Excellency and the Administration of the Government, were the most singular he ever saw. When Sir Francis Head arrived here, they extolled him to the highest pitch. The hon. member for the second Riding of York, sent out "epistles to the farmers," through the Correspondent and Advocate, praising him as a "Radical of the first water." But short-lived was his popularity with them; for the very first speech he made, his very first communication to the House of Assembly, was, on motion of the learned Doctor from Oxford, referred to a committee of privilege, as a breach of the privileges of the House. This must have been premeditated, for the hon. and learned Doctor had his motion prepared before he heard the speech delivered.—He did not even take his seat on the return of the House, from the Bar of the Legislative Council, but actually made the motion before the Speaker was fairly settled in the chair. When it was rumoured that the Executive Council had resigned, the House addressed His Excellency for information concerning the facts, and he, in the most frank manner, communicated the correspondence between him and his council on that subject. His Excellency's Reply, together with the correspondence, was referred to a select committee; and it was worthy of remark, of whom that committee was composed. Were the members chosen from both sides of the House? No, they were from only one side; and although he moved to add two from that side of the House with whom he generally acted, in order that the opinions and views of both parties, might be fairly represented in the committee, it was refused. He said then, and he must still say, that he thought it was very unfair. He wished to have the hon. and learned members for Cornwall and Kingston named on the committee, both Lawyers of high standing, and he thought it was due to their side of the House, that they should be on it; but no, not one but men of their own party would they appoint: and would it be believed, those hon. gentlemen who took on themselves the whole responsibility of this great question, and would not receive any assistance from others, voted against his motion.—Having got it all their own way, they had at last brought in a Report embodying the grievances of the last seven years. But it ought to be known it was all from one side of the House. What authority had they shown for the principles of the Report? Whv, the learned Dr. (Morrison) had found the authority of Mr. Gourlay. [Hear.] After sitting in secret conclave upwards of three weeks, they brought it in, late on Friday night, or rather on Saturday morning, and immediately resolved that it should be printed. Where was the necessity for being in such hurry to get the order passed for printing it? Did they print the documents sent down by his Excellency, before they petitioned the people of the country to petition the Assembly to stop the supplies? [Hear, hear.] No, but it was to prevent hon. members on his side of the house from reading and examining this preci-

ous document, in order that they might be prepared to answer any thing like argument, that might be found within its two or three hundred pages. Yet that house ordered the report to be distributed among the clerks, to be copied for the Correspondent & Advocate newspaper, and that its discussion should be the first thing on the order of the day for Monday morning: thus was a great majority of hon. members on his side of the house driven into the discussion of the subject, without even affording them an opportunity of reading the report.

Such is the manner in which the committee was appointed and the Report made; and how have they proceeded this morning? Did they come forward and propose to discuss the question in committee of the whole House, in such a way that an opportunity would be afforded to the hon. and learned Speaker to express his sentiments, and give the House the benefit of his learning and talents on this great question? No; but with the Speaker in the chair, one moves a resolution, and another moves an amendment to it, which was a manœuvre to prevent any one from the other side of the House from recording their sentiments on the Journals. (Hear, hear.) Was that fair? They should not do so; and he could assure them that he, and those who took the same view of the question that he did, would take another opportunity of recording their sentiments. They come forward and talk of responsible Government:—but he would like to ask those gentlemen, if they wished the Government to be responsible to the Mother Country? If they did, he must declare that he thought it would be most unjust to turn out the members of the Executive Council, when they could not go with the majority of the House of Assembly. (Hear, hear.) Yes, he would declare it would be the most iniquitous system for this country to be governed by the majority of the Assembly, and much worse than our present system was represented to be by those gentlemen. Why, they would turn out every officer who was not of their party; and yet this was the system they wished to introduce into this country. Such was not the practice of the present Government; the records showed that all the patronage was not bestowed on one side, although the hon. gentleman from Lenox and Addington had asserted it was. He complains of the appointment of some young gentleman, a Mr. Beeston, to the office of Collector, and says that the Government should act impartially, and the fittest man should always be selected to fill office. Was that the course pursued by the majority of that House, of which that hon. gentleman claims the honor of being the leader? It was not; for instance, that hon. gentleman had received no less than three appointments this Session, from a majority of the House:—1st. A Commissioner with Mr. Bidwell, to treat with Commissioners on the part of Lower Canada, on all subjects connected with this Province. 2d. To sell the Stock and arrange all the affairs of the Welland Canal. 3d. For disposing of the School Lands; and each appointment to the tune of \$4 per day. And was

he the fittest man in Upper Canada to discharge the duties of those several offices? He (Mr. McNab) supposed the majority of the House intended to commit the affairs of the Welland Canal to his holy and safe keeping, in consequence of the friendly feeling he had uniformly shown towards that great work. As to the Government confining their appointments altogether to persons of one class of politics in the country, it was not true; the opposition benches on the floor of the House gave a flat contradiction to the assertion. The hon. gentleman himself was a Justice of the Peace,—it was true, he did not hold very high rank in the Militia, but whose fault was that? He (Mr. McNab) was sure it must be fresh in the recollection of many hon. members, the reasons assigned by that hon. member, for retiring from the service. According to his own statement, he had the honor of holding the rank of Corporal in the Militia, and was one of the gallant band who made such an admirable retreat before a shot was fired, after marching many miles to take the Brig Oneida, and immediately after retired from the service; consequently his promotion was stopped, and thus was His Majesty deprived of the Military services of the hon. and gallant Corporal. The hon. member for Dundas (Mr. Shaver) was also made a Magistrate, and also held the commission of Captain of Dragoons; and was not he a thorough-going Reformer? And was he the fittest man in all the county of Dundas to be a Justice of the Peace, and Captain of Dragoons? His hon. colleague was a Justice of the Peace—Mr. Chisholm was also a Justice of the Peace and Colonel of Militia. Dr. Bruce had also accepted the appointment of Coroner since he had been in Parliament,—in fact, said Mr. McN. there is scarcely one of the gallant band of Reformers that are now before me, who does not hold some situation under the Government. In addition to which, they have all been well provided for by the majority of this House. No less than eight members of the opposition were, by their own votes, and those who act with them, appointed in one batch, Commissioners at \$4 per day. Even the hon. and learned Doctor (Morrison) opposite had accepted an office during the present Session from the Government he is forever abusing. He hoped the hon. and learned gentleman would not get into a passion with him for mentioning his name, at least not such a passion as he saw him in, in the Methodist Committee Room—he referred to the gentleman who sat all Good Friday, trying the Methodists; had not he taken office under the Government? Yes, he had, he was a member of the Medical Board, appointed by Sir F. B. Head, as that hon. and learned gentleman says, without the advice of the Council. And with all the boasted independence of the majority, they were continually applying for every little office that became vacant in their own part of the country, while they were playing into each other's hands in the way of appointments in that House. It was truly ridiculous to hear hon. members abusing the Government for not appointing persons to office who were unfit to

discharge the duties required of them,—while the Journals of the House showed that with the exception of one or two, every member on the opposition, had either obtained appointments from the Government or from the House, and some of them three and four situations; for instance appointing the hon. member for Halton, Mr. Durand, a Commissioner to sell the School Lands, and at \$4 per day, when it is a notorious fact, there is not a foot of School Lands in the Gore District, and he knowing this, and voting for his own appointment.

There were some more of the proceedings of the party relative to this matter which ought to be exposed. When the documents came down to the House, he moved to print 5,000 copies of them that they might be sent forth to the country; but the learned Mayor and others opposed and defeated the motion; while they prepared a petition, sent it forth to the country, got a few signatures to it, and when it came back, they say, "Here is an expression of public opinion." That was what he (Mr. McNab) called begging the question. They ask the people, "If we oppose the Governor, stop the supplies, bring the government into embarrassment, and throw every thing into confusion, will you support us at the next election?" And these petitions they call a spontaneous expression of public opinion. Here is the document, which I will read to you: it is signed William Lyon Mackenzie, a gentleman whom I suppose you have heard of. (Laughter.) [The hon. gentleman read from the circular letter which accompanied the petition, and then from the language of His Excellency in answer to addresses, and asked—] Is that like the language ascribed to him in this circular? And yet you hear his Excellency accused of "garbling" when a clerical error happened in leaving out the word *these* in the extract from the King's Instructions; and this too by men who had the face to send forth such perverted language as an exposition of his sentiments. [Hear, hear!]

Was not the Governor sworn to uphold the British constitution in this Province? And if his Executive council should take a different view of matters, and give him such advice as would, if followed, lead to the overthrow of British supremacy in the country, was he not bound to dismiss them, whether they were approved of by the majority of the Assembly or not? Was a system which had been acted upon for fifty years to be abandoned for the mere opinion of Mr. Attorney Baldwin or John Rolph? [Hear him!] And because his Excellency was pleased to accept of their resignations would any man think the less of him? or would he do so even if Sir Francis Head had expelled from his councils men who had signed a document which was a libel upon the people of Upper Canada, and which contained doctrines destructive of our connexion with the Parent State? The Report states that his Excellency said, if the council would retire from their principles he would keep them in his service, and that such declarations are calculated to corrupt the public morals. The expression of his Excellency on that subject

was merely the usual hint to resign; but what did the council say? At the conclusion of their document to the Governor they pray, that if their proposal is not acceded to, they may be allowed to disabuse the public mind. They were quite willing to settle the matter with their consciences, and continue in the council, if they could be allowed to publish to all Upper Canada the secrets of the Executive Council. But no, his Excellency tells them he does not want such men for his confidential advisers.

Honourable members on the opposite side talked a great deal about the Everlasting Salary Bill, as they called it. He voted for that bill, and counted it one of the best public actions of his life. [Hear, hear!] It was well for Upper Canada that that bill was passed; for, if it was not, they would now be able to accomplish their object. They would be able to dismiss the judges and all the public officers, at any time, and would vote no salary to the Governor if he did not see proper to appoint Doctor Morrison, Peter Perry, &c. to office, and make William Lyon McKenzie postmaster-general. [Laughter.] What were the salaries voted by that bill? In the first place, there was the salary of the Governor, £2000, should not that be paid? Then, there was the salary of the Chief Justice £1250; should he not be paid? and was not the present Chief Justice an honour to Upper Canada?—the son of one of those U. E. Loyalists about whom so much had been said in that house,—the descendant of a gallant officer, and who, with many other officers of that distinguished regiment, after fighting during the whole of the Revolutionary War, came and settled with their Colonel the late General Simcoe, in this country. Two judges, £1000 each. The Attorney General £300. Should not he have a salary? was not that office necessary? The Solicitor General £200; and five Executive Councillors £100 each. That was the sum total of the everlasting Salary Bill about which so much had been said; and he must say again, that he thought making the salaries of those officers permanent was the best thing ever done for Upper Canada. Talk about the extravagance of the Government when the contingent account of the House of Assembly this year was between £9,000 and £10,000—more than is required for the support of the whole government of the colony. [Hear, hear!] A great deal had been said about the terms upon which the three new councillors took office; but the note from the Governor to them said, “I shall rely on your giving me your unbiassed opinion on all subjects respecting which I may feel it advisable to require it.” If he practised any deception upon them, why did they not return the note at once and require explanation immediately when copies of it were read in the House of Assembly and Legislative Council? Did they not authorise the Speaker in this House, and the hon. Captain Baldwin in the Legislative Council, to read this note, for the express purpose of informing the Legislature and the Coun-

try of the terms on which they accepted office? It might be that Mr. Baldwin had some wisdom, and Mr. Rolph a great deal of cunning, and they knew his Excellency was a stranger in the country, that there was a great deal of business, and they thought he would need them and would keep them on their own terms. But they found their mistake, for he no sooner saw the document they presented him than he bowed them out of office. And he (Mr. McNab) did think, if his Excellency had acceded to their views he should have lost his head for it. They found no fault with the note explaining the terms on which they took office, but went to the Council Chamber, and drew up the declaration which caused their dismissal; and he believed they would give half what they were worth if they could recal it and go back to the Council again.

The hon. member for Lenox and Addington says the Governor has power to declare war. That was new doctrine; at least he never heard before that a Lieutenant Governor of a colony had the power of making war. That hon. gentleman and those who act with him will find war enough when they go back to their constituents, for he [Mr. McN.] was persuaded the document they had brought forward would not go down with the country, but they would be told by the people, "You have brought yourselves into collision with the Governor, you have stopt the supplies and thereby deranged the affairs of the government, retarded the improvement of the country, and injured the public credit abroad; that is not the way to advance the interests of this Province, and you are not the men to be entrusted with them." Let it be known that this Radical Parliament was the first in the history of the country to stop the Supplies. When Mr. Hume proposed such a thing in the House of Commons it was denounced as a revolutionary project and was scouted at once. The hon. member for Lenox and Addington talks a great deal about the language of the Governor; but what sort of language did he make use of about the head of the Government to-day? Such I am sure as the people of Upper Canada will not approve of. He [Mr. McN.] feared, when he came into the House in the morning, he would find difficulty in meeting the arguments which would be brought forward on the other side; but he did not feel so now; they had brought forth nothing like argument to show that the Executive Council should be responsible to the people. Governor Simcoe, and all from his time to the present, had followed the same practice with regard to taking the advice of their council; and he was persuaded the people would not approve of the present measures. No Radical Parliament would ever die a natural death in Upper Canada; the last one sat only two years, and it was called the Long Parliament, and it was not very probable the present one would sit much longer.

Having said so much in reply to hon. members on the other side who had spoken before him, he would now proceed to the main question.

It was difficult to conceive what object the Executive Council had in view when they made their representation, or rather it was difficult to conceive how the real bearing and effect of the representation could have escaped them, for he would be unwilling to charge the whole of them with having made it knowingly. It opens with an almost express declaration of the truth of a variety of statements, which, although zealously asserted and put forth by a particular political party, have been denied with equal zeal and more truth by their opponents. These assertions too reflect strongly on the administration of the government in former times, and therefore came with a peculiarly ill grace from the heads of departments. For example, they assume as the proper construction of the opinion expressed by lord Glenelg, that the condition of the province is "unhappy;" they attribute it to an "unconstitutional abridgement" of their duties. They assert an "established opinion" in the country on the subject, infer a state of discontent when they speak of contentment being "restored," and treat the public mind as in a state of excitement bordering on revolution, which cannot be prevented unless "the system of local government is altered and conducted according to the true spirit and meaning of the constitutional act;" the whole forming a running commentary on the seventh report of the committee of grievances, admitting its truth in some important particulars, and falsifying in spirit and almost in letter the address of the Legislative Council in reply to lord Goderich's celebrated despatch, to which three, if not four, of the very Executive Councillors expressly assented.

The representation may be examined under two heads,—the *matter* and the *manner*: 1st. The Executive Council claim as a constitutional right, or rather as a duty imposed on them by the constitution, and which they have taken an oath to discharge, to advise the King's representative on the affairs of the province generally, i. e. to have all the affairs of the province submitted to them for their advice, without reservation. This claim is founded upon the language of the 31st Geo. 3d, which speaks in one or more clauses of such Executive Council as shall be appointed *for the affairs of this province*; and it is inferred, that because they are so appointed *for the affairs, &c.*, and because only some particulars are fixed in which their concurrence is necessary, the consequence is that their *advice* must be taken on *all affairs*, though their *concurrence* to particular acts only is required. This seems a forced construction even upon the words of the act, still more so when other considerations are adverted to. Would it have been such a violation of the 31st Geo. 3d, as to have prevented the affairs of the province from being carried on, if no Executive Council had ever been appointed; or if one had been appointed limited to the particular matters mentioned in that statute? In other words, is the

Executive Council an integral and necessary part of the government, that the government can have no existence without it? He should find it very difficult to assent to the affirmative of such a proposition, and however impolitic he might deem such a course, and however he might condemn it, he was not prepared to say, that the public business (with the particular exceptions adverted to) might not be legally and constitutionally carried on, though there were no Executive Council. If, otherwise, there must be a species of interregnum, on the resignation of the Council, and a cessation of business till its reorganization not required by any constitutional principle, and occasioning an uncalled for inconvenience to the public service. The appointment of the Council rests entirely with the Sovereign; he appoints what number he pleases, and dismisses them at pleasure, although, to use the terms of the statute, they are appointed *for the affairs of the province*. He could not deduce from that expression any thing directory on the part of the legislature, as to the nature of the appointment or of the rights or duties of the Executive Council. They are not, either as individuals or as a body, responsible for the advice they give, and it cannot therefore be necessary, as a constitutional principle, that their advice should be taken, with a view to hold them responsible to the public for the measures which the government adopts. To understand the question thoroughly, it was necessary to analyze the office of Lt. Governor. The portions of the kingly prerogative, which is delegated to him, are to be administered by him under his personal responsibility; he is to obey such instructions as he may receive from the home government, or in the exercise of a sound discretion in matters on which he is called upon to decide, without reference to that government. In the mere exercise of the prerogative, the performance of those acts which the Crown alone can perform, he stands in the place of the Sovereign; but for the propriety of the course he may take in any such act, he remains personally and individually responsible, not in this province, by reason of the nature of his office, but to the King's government, and to the British parliament: the one of which may dismiss him, the other impeach him. Although therefore clothed with executive functions, he exercises them as a minister, subject to the same responsibilities as the ministry at home. This responsibility is in its nature indivisible; whatever acts are done must be viewed as done by him alone. The Lieutenant Governor requires the concurrence of the Executive Council in certain points, and he has the right of applying for their advice on any other affairs he may deem advisable. To give him this right they are constituted a council for the affairs of the province, in order that he may advise with them, whenever any subject presents itself rendering such advice desirable. The very limitation of the advice of the Executive Council to certain specified cases, would appear to negative the necessity of their advice on other occasions, while their being an Executive Council for the affairs of the province renders them liable to be called upon for their

advice as often as the Lieutenant Governor may require it. Such was the construction put on the 31st Geo. 3d, by the ministry by whom the act was carried through the British parliament, and such construction had uniformly prevailed to the present day.

In the consideration of this question, it must be carefully borne in mind, that we are construing a law that exists, and not enquiring into the policy of forming an Executive Council on other principles. Arguments drawn from any supposed advantages that would result from converting the Executive Council into an administration of individuals holding office in the colony, liable to lose their offices when the policy they pursue is not acceptable to the majority of the House of Assembly, are foreign to a proper consideration of the question that now arises. Upon that point he should only remark, that such a scheme seemed rather difficult to reconcile with the relation of colony and parent state, and that it would seem rather unjust that the members of the local government should be responsible for the policy pursued here, while that policy is dictated by the home government; and that unless the home government has the right of such dictation, the connexion with the mother country becomes merely nominal, extending in reality to little more than the appointment of the Lieut. Governor.

Having thus far adverted to the matter of the communication, a few remarks might be offered on its *manner*. The Council commenced by an assertion that they made their representation "impressed with the oath which they have taken"—they argue that they are in duty bound to advise the Lieutenant Governor on all the affairs of the province, and that no affairs of the province ought to be withheld from their view, which he presumed to mean, that they felt impressed that they were sworn to advise the Governor on *all* the affairs of the province, and could not conform to the spirit of their oath, unless all such affairs were submitted to them. In no other view could we justify them in making so novel a demand on the Lieut. Governor, at the moment when his attention was necessarily much occupied with the legislature, and when, from his being a stranger in the province, he might find it useful to make frequent reference to his Council. It seemed strange that, resting their application on the obligation of their oath, they should conclude their representation by a prayer, not that they might be allowed to retire, but that they may be allowed "to disabuse the public from a misapprehension of the nature and extent of the duties confided to them;"—that is, to be allowed to tell the public, "We believe the duties of our office require us to advise on *ALL* the affairs of the province—we have taken an oath to perform those duties—we are prevented, by the course the Lieut. Governor adopts, from discharging the obligation of that oath; but our scruples of conscience, which impelled us to represent the matter to the Lt. Governor, and to require what we have required, will be removed if we are allowed to let you know the true state of the case. We have

no objection to remain Executive Councillors, although restrained in the discharge of our sworn duties; our only objection is to be *thought* responsible by the public when we are not so in fact." It was obvious there could be but one answer to such a communication. He would offer no remarks on the present Council; but it must be evident, that a new appointment was rendered unavoidable, unless his Excellency had been unwise enough to yield the point in dispute, and while he remained in his own person responsible, to submit to the views and opinions of his Council in the administration of the government.

MR. McLEAN remarked, that the Report under consideration contained 104 pages, and, owing to the shortness of the time since it was brought in by the Committee, little opportunity had been afforded for hon. members not in the secrets of the committee-room to become acquainted with its contents. That, however, was not of much consequence, for the very principle avowed by the framers of it during this discussion, as being the foundation of the Report, was quite sufficient to cause its rejection by every loyal and patriotic man. That principle was, "responsible government." Perhaps he did not properly understand what was meant by a responsible government; but he took it for granted that it meant a government responsible to the House of Assembly. Now, he would like to ask hon members who seemed so anxious to have a responsible government, as they call it, if they were to form an Executive Council responsible to the House of Assembly, whether its members could retain their situation? Surely they could not; nor had he any idea that any one of the gentlemen who were called Reformers, and who were appointed to the Executive Council, ever thought of being responsible to that House. It was practically impossible that such responsibility could exist; for, being consulted upon all affairs of the Crown, and being responsible to the House of Assembly for the advice which they gave, they would acquire such power and controul over the Governor as was altogether inconsistent with the proper subjection of the government of this Province to that authority of the Mother Country which must be necessarily maintained by every Parent State over its Colonies. Notwithstanding all that had been heard of the grievances of the country and the means of redressing them, it was now avowed that nothing would satisfy the majority of that house but what they call a responsible Government;—that is a government responsible to the House of Assembly of Upper Canada, but not to Great Britain. But the very moment we establish that doctrine in practice, we are free from the Mother Country. If it was the wish of the majority of that house to separate this Province from the fostering care and protecting power of that country, or from what they ungratefully called her "baneful domination," let them adopt that Report. But they might rest assured that the people of this country had eyes and ears,—they could read and understand, and they would

discriminate between those who were actuated by patriotic motives and those who were only the demagogues of the hour, [hear, hear!] whose element was agitation, but who had no sincere desire to remedy the real grievances of the country. [Hear, hear.] Yes, hear; he hoped the people would hear and understand. He was not in that house to court the popularity which was gained without merit and lost without a crime; but he trusted that so long as he had the honour of a seat in it, he would fearlessly advocate those measures which he considered were for the interest of the country to be adopted, and as fearlessly oppose all others of a contrary tendency, however speciously they were put forth.

The discussion of this question, it was said, was forced upon the house by His Excellency the Lieutenant Governor. He (Mr. McL.) would like to know how he had done it. He came to this Province an entire stranger, and, as he said, unconnected with the political differences of the country; and what interest could he have in agitating such a question? He came here a professed Reformer, he was even called a "Reformer of the first water" by those very persons who now seemed to think they could not find epithets sufficiently abusive by which to designate him—but the moment he would not agree to all their views they attacked him in the grossest manner. The Report stated that the first Governor of this Province was a member of the British Parliament when our Constitutional Act was passed, and it greatly extolled him for his liberal and patriotic views in regard to this Colony; but do we find in any of his acts, speeches, or proclamations, one word about "responsible government?" Not one syllable. The bone of contention seemed now to be whether the Governor is bound to consult the Council upon all affairs of the Colony; but the very first act of Governor Simcoe, whom the hon. member for Lenox and Addington holds up as a pattern to all other Governors, namely, the division of the Province into Districts, was evidently done without the advice of the Executive Council; as the Proclamation on that subject says not one word of its being done with their advice and consent. And the very first act he performed, when the first Parliament met, was to appoint a Speaker of the Legislative Council, which was also done without the advice of the Executive Council. How, then, could hon. members stand up and say that the Governor was bound to consult them on all affairs, when such was not Governor Simcoe's practice, and when the very Act under which we live only requires him to do so on two or three occasions? The moment you declare that he, through his Executive Council, is amenable to this House, that very moment you declare the Mother Country has nothing to do with us. He is appointed by His Majesty as one of his Ministers, and he has a painful duty to perform for which he is accountable to his Sovereign. But hon. gentlemen on the opposition say, "Shall we have a Governor who is only responsible to Downing Street, 4,000 miles distant?" Sir, (said Mr. McLean) I look upon

all such expressions as that to be tantamount to a declaration of a wish for independence from the Mother Country, and they show but too clearly that the persons who make use of them are tired of the connexion? (Hear, hear.) To be sure they do not come out and say so plainly, for they well know there is too strong an attachment to that country by the people of this Province to tolerate it; and therefore they insidiously instil, under specious names, the poison of their principles into their unsuspecting minds; thus endeavouring to destroy their confidence in the justice of the Government of Great Britain towards them, and render them discontented with their present colonial condition. (Hear!) While they thus industriously labour to agitate this country, they are not idle in forwarding the same designs with the Government at home, by endeavouring to create distrust of the loyalty of the people of this Province. Address after address, and representation after representation, and grievance report after grievance report, embracing "every imaginable topic of complaint," are sent home, which must produce a very unfavourable impression respecting the people of this Colony. And it is to be feared, if they continue crying "grievance, grievance, grievance!" that, like the boy who cried "wolf," they will not be heeded when there is some real grievance to complain of, and then their object will be accomplished. He held it to be the duty of every good subject to inculcate peace, and do all he could for the good government of the country; but he would ask, was it consistent with the duty they owed to the Government to be crying out "grievance" continually? Or, was it a duty the members of that House owed to their constituents, to get up petitions in the House and send them out to the country, asking the people to sign them? Would it not be better to leave it to the good sense of the people to petition them when they saw a necessity for so doing? But no, they could not wait for that, but sent out petitions calling,—yes, actually *calling* on the people to sign them.

In further discussing this question he would remark, that the very next clause of the Constitutional Act to that on which they found their claim that the Council should be consulted upon all occasions, says that the Governor shall do certain acts without their advice—present an incumbent to such rectories as were established with the advice of the Council. But what does all this agitation amount to? Just to this: the late Executive Council claim to be consulted on all the affairs of the Province; the Governor says, "No, gentlemen, I am sent here by the King with particular instructions for the government of the Colony—I will consult you whenever I think it necessary; and if you claim to be consulted upon all occasions as a matter of right, you must give up such opinions or leave my Council." This was just the whole matter. Was there any thing new or extraordinary in His Excellency's conduct? No one could say so with truth; but, on the contrary, he had acted in conformity

with the view taken of the matter by the Act and all who administered it. But, because certain individuals had expressed different views, the house was called upon to take such measures as never were taken on any question in this country—to adopt the Report and stop the supplies. Would the people support the majority in this course? No, they have had too much opportunity of judging of the acts and disposition of that majority already; and if this resolution was adopted, they would ask “what good is to result from it? why is the public business stopped?” They would be told in answer, “We want to get a responsible government.” Then they would ask, “What do you mean by a responsible government? must not the Governor be responsible to the King?” What would those gentlemen reply to such a question? He was inclined to believe they would find more difficulty in satisfying the people even with regard to that plausible term, *responsible government*, than they anticipated; for they would find themselves mistaken if they imagined that the great bulk of the people had not sufficient understanding to know that a responsible government, in the sense in which they meant it, was inconsistent with a state of Colonial relationship; and they were not yet prepared to throw off their allegiance, and break the connexion which subsists between this Colony and the mother country. He did not believe the country would support them in these measures. He had not much time to look over the Report, but, from what he had seen of it, he would say, that he never saw so disgraceful a public document emanate from any public body. (Hear, hear!) He would, however, warn hon. gentlemen that the people would not be cajoled and bamboozled by abusive language instead of argument. The hon. member for Lenox and Addington said that so much precaution was taken in the Council to keep their representation secret, that the junior clerks were sworn to secrecy. Well, he (Mr. McLean) would like to know how the hon. gentleman became acquainted with that fact; but he would say this, that, if any member of the Council administered such an oath, he far overstepped the line of his duty and authority. (“Show it,” from Mr. Perry.) Show it, he says; why he has just as much right to administer such an oath of secrecy as any member of the Council had, and to do so is contrary to the statute against unlawful oaths, (hear.)

Mr. PERRY, interrupting,—he never said that any member of the Council swore the clerks. He only said they were sworn to secrecy.

Mr. McLEAN replied, well, how does that help it?—(hear, hear.) How dare they require any other person to do what was against the law of the land? No other person would feel it necessary to do so; and by their doing it they proved themselves unworthy of their situation. Just as well might that hon. member swear any of the copying clerks of this House to keep any thing secret he was copying for him. It was said Mr. Baldwin did not receive the note from His Excellency till after the new members were sworn in: what differ-

ence did that circumstance make? If they found fault with the terms of it when they did receive it, why did they not at once resign office? Was it to be supposed the King would send out a Governor here, who was to be accountable to him for the manner in which he administered the Government of the Colony, and bind him hand and foot and deliver him over to an Executive Council who were to be under the controul of the House of Assembly? What authority would His Majesty then have in the Colony? or on what principle of justice could he hold the Governor responsible for the administration of its affairs? Such principles were contradictory and inconsistent, and would not go down with an intelligent and reflecting people. [Hear, hear.] Public opinion on the subject had already been shown from the spontaneous meetings which had held been in different parts of the country, and the addresses which had been forwarded to His Excellency, the signatures to which he was authorized to say amounted already to 5,000, and they were pouring in daily. A few months, he was convinced, would prove to the majority of that house, that they had misrepresented the feelings of the people of this country, who did not desire a system of responsible Government, or self Government, that was inconsistent with their connexion with their revered Mother Country.

MR. WELLS remarked, that he found great difficulty in rising to address the House after the hon. and learned member for Cornwall; but he felt it to be his duty to express his sentiments on this question. The ancients had a custom of crowning their heroes with laurels at the close of any great battle; and in accordance with that custom he thought the people ought to crown the hon. and learned member at the close of the session for his patriotic exertions. He had talked a great deal about responsible government, and called all who advocate this measure demagogues, whom the people would spurn from them at another election. That hon. and learned gentleman had, to be sure, a good opportunity of knowing at the last election what the country thought of the men he politely termed demagogues, when he was turned out of the representation of the county of Stormont and had to get some few canal-men to put him in for the little village of Cornwall. Such remarks about public opinion came with a very bad grace from that gentleman. His Excellency, he says, came here to make those reforms which are required. Does the hon. and learned gentleman indeed admit that there was any abuse to reform? Who ever heard him talk of reform before, except it was to oppose it?

MR. McLEAN. I did not say so—but that he was called a reformer.

MR. WELLS. Well, His Excellency says himself that he has come here for the purpose of reform; but that hon. and learned gentleman says no reform is necessary, and yet he pretends to be a supporter of His Excellency! That, however, was just as consistent as the rest of his conduct. With regard to His Excellency's measures of reform, he (Mr. W.) thought they would amount to about the same thing as the reform of the hon. and learned member for Cornwall. That hon. gentleman made a long speech, containing a great many bold assertions; one of which was, that Governor Simcoe did not consult his Executive Council in his first act as Governor of this Province. He [Mr. W.] was willing to admit that the proclamation does not say he did, but it was for that gentleman to prove he did not consult his Council respecting the matter on which it was issued. Such begging the question was the sign of a bad cause. He says those who call themselves reformers won't come out and declare what they want, and insinuates that they want a separation from the mother country. Such assertions were a libel upon the reformers of Upper Canada: and if a separation

was desired by any in this country, it was by the hon. and learned gentleman's party. Look at the Montreal Rifle Corps,—the "casting about in the mind's eye for some new state of political existence,"—the threats of those high in office that they would resist the law by physical force when it did not suit them, and many other similar instances. And, indeed, all the acts of his party have done more to bring the affairs of the country into a state of confusion, than all the reformers ever did. [Hear, hear.] Have they not upheld every abuse? The people have declared that reform is necessary to preserve the union of the Empire, but he says no reform is necessary.

The hon. and learned gentleman from Hamilton found great fault because the committee were all from one side of the house. But suppose two members had been appointed from the other side, as he proposed, what could they have done against the five others? No doubt he would like that such persons should be appointed by the majority of the house on their committees; but he (Mr. W.) thought the majority knew their own business, and who to appoint to transact it;—not Tories, for they could not put confidence in them. Then the hon. gentleman made a great outcry about stopping the supplies, and said it had not been done in England for a hundred years. No doubt he would not like them to be stopped, as he and his friends expect to be benefitted by them; but so long as the Government is administered contrary to the wishes of a majority of the House of Assembly and of His Majesty's Government, the supplies should be stopped, whatever consequences might follow. Lord Glenelg says in his Despatch, that they should be withheld whenever the interests of the country require it; and this act of the house will be approved of by all who are not willing to bow down to the golden calf.

With regard to the question of the Executive Council, the first thing to be considered was, does the constitution appoint them? and next, are they to be consulted on all the affairs of the Province, or only on a few? It is quite foreign to the principles of the constitution, that they should be consulted only on such matters as the Governor pleases. That he believed would be admitted. He considered it to be the brightest gem in the British Constitution, that the King was dependant on the people through the Cabinet Council; and the constitution of this country, as explained by Governor Simcoe, required that the council should be consulted on all the acts of the Governor, and be responsible to the House of Assembly for the advice which they gave; and without it the government was nothing but a despotism,—the mere government of one man, who was a stranger to the country. When His Excellency first came to the country he admitted the principle that a Ministry should govern the Province, for he sent for the hon. Robert Baldwin, and required him to name the other members of the Council, according to the English principle; but he did not carry it out in practice. Why should he have been so very particular in naming his Council, if he did not intend to take their advice? A great deal had been said about those petitions; but if any hon. members thought their constituents could be deceived by the petitions, he knew it was not the case with his. They speak as if we were chucking the petitions down the throats of the people; but when they received them, they were at liberty to sign them or not, as they pleased. Not only a great deal had been said in that house about not printing the documents that were referred to the Committee, but some fellow down in Quebec had the ignorance and impudence to propose a resolution at some meeting, condemning the House of Assembly of Upper Canada for not printing them. [Hear him.] Let His Excellency dissolve the house, and see if the constituency of the country will not acquit themselves nobly,

and show him that Britons were never born to be slaves. [Loud cries of hear, hear.] We might derive a useful lesson from the page of history. In the old Colonies, now the United States, secret despatches were sent home, recommending measures contrary to the interests and wishes of the people, till they could stand it no longer; and so it would be in this country if the present system was continued,—it would result in open rebellion. It was the duty of members of that house to do all they could for the interest of the country; and as he believed nothing else would secure attention to our complaints in England but stopping the supplies, he would vote for the resolution.

THE SOLICITOR GENERAL began by observing, that when this important subject was referred to a Select Committee, the house and the country had a right to expect that an able, statesman-like and temperate report would have been made, containing intelligible, if not convincing arguments, and referring to authorities which would at least have the appearance of plausibility, if they were not found absolutely conclusive in favour of the views of its framers:—he regretted, however, to state that in these expectations the country at least, if not the house, would be completely disappointed. The dispassionate and intelligent reader of the voluminous document then lying on the table, would search in vain throughout its pages for dignity of sentiment, patriotic views, or calm, convincing argument illustrative of truth: while, as a literary production, it would be found to be beneath criticism,—and in its general style and language, so marked with an utter disregard of all delicacy of feeling, and the ordinary courtesies of life, as to render it a disgrace to any legislative body that might sanction its promulgation. The speech of the Chairman of the Committee, which had been addressed to the house, was but a repetition of the leading statements contained in the Report, and like the Report itself, contained no one solid argument to sustain the new and most extraordinary interpretation of our Constitution which had suddenly broken in upon the minds of some of our self-styled reformers. It would not be surprising therefore if, in the course of the remarks he should address to the house, he should not refer very frequently either to the Report or to the speech of the Chairman, as in fact his principal duty would be, to endeavour to supply information which had been altogether overlooked or disregarded by the advocates of the new theory. It appeared to him that the point to which the Committee should have turned their attention was the origin of Executive Councils in the Colonies—the duties originally assigned to them,—and the responsibility, if any, which attached to them as Councillors:—had this course been adopted by the Committee, they would have been greatly assisted in coming to a correct conclusion—and why they had not done so, he would not stop to enquire, but leave it to the public to conjecture motives, of which they could form as good an opinion as he could. Another advantage which would have resulted from this plan of investigation, had it been adopted, would have been, that the Committee would have informed themselves of the

utter impossibility of the Lieutenant Governor's divesting himself of responsibility, and that by the Laws and Constitution, he is emphatically and distinctly responsible to the King as the head of the Empire, politically; and to the people of this Province, individually, in his private capacity, for every act of his Government; and that the Executive Council are not, and cannot be made responsible to the people for any of their acts. Without further remark he (the Sol. Gen.) would proceed to show on what grounds, and upon what authorities, he rested these opinions. There were not many works extant containing a history of the Constitutions and forms of Government in the Colonies, but there were a few, and some of them giving a very explicit account of the Councils appointed by the Crown,—their duties and responsibilities, especially in the Colonies in America: and in order to attract the attention of the House to the line of argument he intended to pursue, he begged hon. members would bear in mind that it would eventually appear, that the Executive Council of Upper Canada, which it was contended was created by, as well as identified with, the Constitution of the Province, (as conferred by the 31st Geo. 3,) was *merely the continuation* of a body that had existed in Canada from the first moment of an organized Government after the Conquest, down to the period of the passing of that Act, which divided the Province of Quebec into Upper and Lower Canada,—and which was precisely similar to those existing in the old Colonies, on this Continent, and the West Indies. The first authority he should cite in support of this argument was that of a gentleman who held the office of Chief Justice of Georgia, during the time that State was a Colony of Great Britain, and subsequently held high legal appointments in the West Indies. This gentleman in his remarks on the Council says,—

"They are to give advice to the Governor or Commander in Chief for the time being *when thereunto required*; and they stand in the same relation to the Governor in a Colony that the *Privy Council does to the King in Great Britain*: in some cases the Governor can act without their advice and concurrence, and there are other cases in which the Governor is required by his instructions not to act without the advice and concurrence of his Council"—"which (instructions) every Governor and Commander in Chief should carefully attend to."

"The Council sit as Judges in the Court of Errors or Court of Appeal."

"The Council are named in every Commission of the Peace, as Justices of the Peace throughout the whole Colony."—*Storke's Constitutions of the British Colonies*, pp. 239, 240.

Thus we see the origin of Councils in the Colonies, and the duties assigned to them, and how completely the duties heretofore performed by the Council in this Province correspond with those imposed on the Councils in the old Colonies now separated from Great Britain, as well as those which remain appendages of the Empire. In the old Colonies, they advised the Governor when required by the King's Instructions, they do so here; in the old Colonies they constituted a Court of Appeal, by our Constitution that duty is imposed upon them here;—and in this Province, as in the other Colonies, their names appear as Justices in every Commission

of the Peace throughout the Province. The same author observes, that when a new Governor came to a Province, the names of the persons who were to constitute his Council were named in his instructions, and that no other appointment or commission was necessary; but this practice has now fallen into disuse, at least in this Province. The last set of instructions containing the names of the Council were those brought out by Sir Peregrine Maitland; but it should be borne in mind, that those very instructions are these now laid on the table by command of Sir Francis Head, that they contain the names of the Councillors then existing in Upper Canada and *prescribe their duties*. These instructions and these duties have undergone no change since that period.

Governor Simcoe, the first Governor that came to this Province, brought with him the first instructions that were designed to direct the King's Representative, the Council, and other Officers of the Government in their duties; and as they were in the adjoining building, on record in the books of the Council, it was somewhat strange that the Committee did not examine them. They would be found to be the same as those delivered to Sir Peregrine Maitland.

In some of the old Colonies the Council was possessed of legislative power conjointly with the Governor, and sometimes formed an intermediate legislative branch between the Governor and an Assembly elected by the people:—of course, in all matters relating to the enactment of laws, the Governor could not act independently of the Council, except in so far as respected the assenting to or refusing of bills. Upon the death, removal, or resignation of the Governor, the senior Councillor by the *King's Instructions* assumed the Government, as in this country, unless the senior Councillor happened to be *Superintendent of Indian Affairs*, or *Surveyor General of the Customs*, (which officers were always *extraordinary* members of the Council,) in which case the Government devolved on the *ordinary* member of the Council next in seniority.

Such was the nature and constitution of the Executive Councils in the old Colonies in America, and although in the majority of those Governments, Legislative Assemblies existed, one branch elected by the people as in this country, yet there is no trace of any pretence that those Councils were responsible for their official acts to any other person or party than the King. Responsibility to the elective branch of the Legislature was never thought of; and the Chief Justice of Georgia, whose work he had quoted, and who had resided and held office in several of the other Colonies, distinctly states, that the *Executive Council* were *guided by the King's Instructions*, and were therefore responsible to His Majesty only. They were appointed as in this Province by the King, and removed at his pleasure; they advised his representative, *when required*, in *secrecy*; their acts could be known to the King only, and to him only were they accountable for them.

Let us now consider the origin and constitutional vers of the Executive Councils in these Provinces: they will be found to be precisely similar to those already described.

It would be recollected that Canada was obtained by conquest from the Crown of France in 1759, and that by the Treaty of Paris in 1763, it, together with other Territories in America, was finally ceded to Great Britain:—the form of Government in Canada between the years 1759 and 1763, was of course a purely military despotism, regulated by the terms of the capitulation. In the year 1763 the King issued his Proclamation, in which he declares, that the Territory in America, ceded by the Treaty of Paris, should be erected into four separate Governments, viz: Quebec, comprising the whole of Canada; East Florida; West Florida; and Grenada. For the purpose of shewing clearly the views of His Majesty with respect to the form of Government intended by him to be established in those Territories, it would be proper to refer to the Proclamation itself, which contains the following passage:—

"And whereas it will greatly contribute to the speedy settling our said new governments, that our loving subjects should be informed of our paternal care for the security of the liberty and properties of those who are and shall become inhabitants thereof, we have thought fit to publish and declare by this our proclamation that we have, in the letters patent under our Great Seal of Great Britain, by which the said governments are constituted, given express power and direction to our Governors of our said Colonies respectively, that so soon as the state and circumstances of the said Colonies will admit thereof, they shall, with the advice and consent of the members of our Council, summon and call general assemblies, within the said governments respectively, in such manner and form as is used and directed in those Colonies and Provinces in America which are under our immediate government; and we have also given power to the said Governors, with the consent of our said Councils and the Representatives of the people, so to be summoned as aforesaid, to make, constitute, and ordain laws, statutes, and ordinances, for the public peace, welfare, and good government of our said Colonies, and of the people and inhabitants thereof as near as may be agreeable to the laws of England, and under such regulations and restrictions as are used in other Colonies; and in the mean time, and until such assemblies can be called as aforesaid, all persons inhabiting in, or resorting to our said Colonies, may confide in our royal protection for the enjoyment of the benefit of our laws of our realm of England: for which purpose we have given power under our Great Seal to the Governors of our said Colonies respectively, to erect and constitute, with the advice of our said Council respectively, Courts of Judicature and public justice within our said Colonies, for the hearing and determining of causes, as well criminal as civil, according to law and equity, and as near as may be agreeable to the laws of England, with liberty to all persons who may think themselves aggrieved by the sentence of such Courts, in all civil causes, to appeal, under the usual limitations and restrictions, to us in our Privy Council."

Here then was the root from which sprung our present Constitution. In the above extract it will be observed, that in the Patent constituting the Government of Quebec, allusion is made to "*a Council*," and that the Governor, with the advice of such Council, might summon and call a General Assembly, "*in such manner and form as is used and directed in those Colonies and Provinces in America which are under our immediate government*." Now it would scarcely be contended that the Council thus created by the King, could be responsible to any other power than himself. There was not at that time, nor for years afterwards, any representative body in the Colony; and it might be further remarked, that had an Assembly been convened in pursuance of the power contained in the

proclamation, it (the Assembly) was to be constituted as in the "*other Colonies and Provinces in America*," and it does not appear that it was to be clothed with greater powers than they possessed. No Assembly, however, was ever called under the authority of the proclamation, and Canada continued to be governed by a military officer, assisted by a Council, until the year 1774. For eleven years an Executive Council did exist, clearly and positively irresponsible to any power but the Crown, and possessed too of powers greatly transcending those of the present Council, for it appears by the 4th section of the Act 14th Geo. III. ch. 83, that with the Governor it had power to *enact laws* by which the inhabitants of the Colony were bound. This Act, the 14th Geo. III. was the first passed by the British Parliament giving a settled form of government to Canada, and in it allusion was made to the existence of a Council, possessing the powers just mentioned. That Act authorized His Majesty to appoint a certain number of persons as Legislative Councillors, who, when appointed, should hold their offices for life; and ordained that the laws and ordinances passed by them, and assented to by the Governor, on behalf of the King, should supersede all ordinances previously made by the Governor and Executive Council. The Executive was not, however, done away with; on the contrary, it continued to exist to advise the Governor; and by an ordinance passed in the year 1785—by the Legislative Council and Governor, it was constituted a Court of Appeal as in the old Colonies: which ordinance is recognized and confirmed by our Constitutional Act, 31st Geo. III. ch. 31, sec. 34. Before proceeding to examine the provisions of the important act last mentioned, it might as well be asked whether the Executive Council of Quebec, between the years 1774 and 1791, could be said to be responsible to any other power than the King for their official conduct? It would be manifestly absurd to say that it was responsible to the people, at a time when the people had no voice in the Government. The Governor and the Legislative Council were both appointed by the King; the Executive Council was a body created by the King, which he could continue or suppress at his mere will and pleasure—there being no law or ordinance that required their existence. Being appointed, their duties were defined by the King, and lessened or extended according to his sole decree, unless where particular duties were imposed by ordinance; and when so, those duties were of a character distinct from those of advisers of the King's Representative. Where, then, should we seek for their *responsibility to the people*? It could no where be found. (Hear, hear.) If then up to the time of passing the Constitutional Act the Executive Council were alone responsible to the King, the next and most important question to be decided was, whether by that act their character was changed,—whether in fact, as is now alleged, "*The Executive Council of this Province is by the Constitution responsible to the people, and not to the Crown—and like the Cabinet in England should go out of office upon a VOTE OF THE ASSEMBLY, and that the Governor is bound by their advice, and is not responsible for his acts, any more than the King is for his acts.*" Those who blindly contended for a principle so dangerous to the peace, welfare, and good government of this Province, would search in vain for support from the great Charter conferred upon its inhabitants for the protection of their liberties. That act recognizes a Council to be appointed by the King, but it *creates* no such body. It was manifest that when the 31st Geo. III. was passed, the British Parliament had before it the King's Proclamation of 1763—the

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Royal Instructions to the Governor—the Act of 14th Geo. III. ch. 83—and the ordinances of the Province of Quebec, passed in virtue of the last mentioned act; each of which was specifically referred to in the Constitutional Act; and Parliament assuming that the King in the exercise of his royal prerogative would continue a Council which had previously existed, required of it, when created, certain *specified duties*, but no where making it a *Cabinet* which by its advice was to govern the Province, and assume the power and responsibility of the Crown,—rendering the King's Representative a mere cipher, subject to its domination and controul. A principle so preposterous as this, could no where be found in the Constitution. (Hear, hear.) Nothing could be more clear than that it never was intended that the Council should have greater powers than were entrusted to it prior to the passing of the Constitutional Act; which powers were defined in the King's instructions, and in the laws and ordinances then in force in the Colony, passed in pursuance of the powers given by the 14th Geo. III. By an ordinance of the Province of Quebec the Governor and Executive Council were constituted a Court of Appeals, and were continued such by the 34th section of the Constitutional Act—and by another section the Governor was required to act with the advice of his Council in erecting parsonages and endowing them: these are the only duties *specifically required* of the Council; all others depend on the will of the Sovereign. If, as is contended, it was meant that nothing could be *constitutionally* done without the advice of the Council, was it to be believed that so important a principle would have been left in doubt by the eminent Statesmen who framed the Constitution? It was inconsistent with common sense to suppose they would have been so blind to their duty. [Hear, hear.]

But in truth, there could be no doubt in the minds of dispassionate and intelligent men—the Constitution itself gave a plain and distinct negative to the assertion, that the Governor is at all times, and upon every public matter, to consult the Council. It would be admitted that no duty which a Governor has to exercise can be of greater importance than deciding on the *Laws* presented to him by the other branches of the Legislature for the Royal assent; and it may be fairly argued, that if upon any one point more than another he stands in need of the advice of a council, it must be in coming to a decision on questions which may involve the safety of the liberties and property of the people of the country; notwithstanding this, however, *he is not to be guided by the advice of his Council*, but by the *Royal Instructions*. This was a provision of the Constitution itself, couched in the following plain and intelligible words:

"SEC. XXX. And be it further enacted by the authority aforesaid, That whenever any bill, which has been passed by the Legislative Council and by the House of Assembly in either of the said Provinces respectively, shall be presented, for His Majesty's assent, to the Governor or Lieutenant Governor of such Province, or to the person administering His Majesty's Government therein, such Governor or Lieutenant Governor, or person administering the Government, shall, and he is hereby authorized and required to declare, according to his discretion, but subject nevertheless to the provisions contained in this act, and to such instructions as may from time to time be given in that behalf by His Majesty, his heirs or successors, that he assents to such bill in His Majesty's name, or that he withholds His Majesty's assent from such bill, or that he reserves such bill for the signification of His Majesty's pleasure thereon.

This section of the Constitutional Act was important for several reasons, but principally because, in the first place, it at once overthrows the doctrine that the Governor is on all occasions to consult his Council, or act by its advice; and secondly, as shewing that the King's instructions from

time to time given were recognized by Parliament, and embodied in the Constitution as binding on the Governor. (Hear, hear.) The clause just quoted required the person administering the government to assent to or reject bills "according to his discretion," not by and with the advice of his Council, but in conformity with the instructions he may "from time to time" receive from His Majesty. How absurd would it then be for a Governor, were he to apply to his Council in a doubtful case for advice, and acting upon it, assent to a bill contrary to the orders contained in his instructions, which, by the express terms of the Constitution, were to be his guide. How would he excuse himself by alleging that he acted upon the advice of his Council, instead of his instructions? Where then must the responsibility rest? Upon himself, of course; and it would be out of his power to rid himself of it, and cast it upon another. (Hear, hear.)

The Constitution having thus emphatically recognized the Royal Instructions, as binding upon the Governor, and forming a part as it were of the Constitution itself, it would be proper again to refer to those Instructions for the purpose of placing before the house, in a clear and connected manner, the duties required by the Sovereign of the members of his Council when he appointed them to their office: the following were the words employed:

"To the end that our said Executive Council may be assisting to you in all affairs relating to our service, you are to communicate to them such and so many of these our Instructions wherein their advice is mentioned to be requisite, and likewise all such others from time to time as you shall find convenient for our service to be imparted to them."

Language could scarcely be more intelligible, or free from ambiguity, than was here employed; and let it be borne in mind, that these instructions were brought to this country by Governor Simcoe, who was also the bearer of the Constitution conferred upon this Province, and which he was charged to put in operation. They were moreover delivered to him after the Constitutional Act had passed the British Parliament, and by the same Statesmen who had conducted that measure to maturity. (Hear, hear!) If, then, the measure now contended for was correct, those Statesmen were the first to attempt to violate the Constitution they had framed, and Governor Simcoe was selected and agreed to assist them in their design! There was something so wicked and preposterous in the mere mention of such a conspiracy that the mind instantly repels it without further investigation.

The Councillors named in the instructions containing the paragraph just quoted, were sworn into office in the presence of Governor Simcoe, and it would be too much for the most credulous to believe that such would have been the case if that able and excellent man believed that the duties of those Councillors were unconditionally circumscribed by the King, from whom he had just received his commission as the first Lieutenant-Governor of Upper Canada.

And here he (the Sol.-General) would pause on this branch of the subject, and calmly, but earnestly, entreat hon. members to consider the question as he had attempted to present it to them. An attack has been made upon the Lieutenant-Governor, of a most

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violent—one might say ferocious, character—and he is charged with an attempt to change the Constitution, or to prevent His Majesty's subjects from fully enjoying it, by refusing to surrender his power and responsibility to the Executive Council!—but, upon a candid examination, will any one say that he could have acted differently from what he has done? Clearly not. Were he now to adopt the views contained in the Report of the Committee, he must place himself in direct opposition to the commands of the Sovereign contained in his Royal Instructions, and by which every preceding Governor had been bound. The real state of the question is this—it is with *the King* that the House is coming into collision, and not with his representative. If Sir Francis Head be wrong, the error did not originate with him: The King on his throne is the party this attack must affect—it is against his royal authority that this House is now contending; and, to be successful, they must compel him to surrender, as unconstitutional, the powers he has exercised without dispute ever since, and long before, Upper Canada became a portion of his dominions. For his own part, he (the Sol. General) earnestly prayed, that, for the safety, peace, and tranquillity of the country, the attempt now made by the House might fail:—In its success he sincerely believed the highest interests of the Colony would be sacrificed; but he had too much confidence in the wisdom and integrity of Government to suffer himself for a moment to imagine that a scheme so certain to bring destruction on our most valued institutions could succeed;—something more than blustering language, and insulting resolutions, and abusive reports, must be resorted to, in order to obtain so important a change in the system of our Government as that contended for by the majority of the House. With the British nation, hard names and violent conduct would avail but little; on the contrary, such proceedings would effectually counteract the result sought for, especially when they betrayed themselves, as in the present instance, in public documents emanating from a legislative body whose acts should be marked with dignity, forbearance, and calm reasoning. There were few men whose political sentiments he more cordially detested than those of Mr. Joseph Hume, of "baneful domination" memory; but let the Report under discussion be laid before that gentleman, and he was satisfied that it would be treated with contempt even by him for its rudeness and its entire destitution of dignity and argument. The House might, if it pleased, destroy the prosperity of the country, and spread embarrassment through all classes of the community, by refusing supplies, but what would this avail? The King upon his throne must be attacked and overcome before his right to issue and enforce those Instructions could be invalidated. (Hear, hear! and applause.)

From what he had stated it was evident that the powers of the Executive Council were limited by the King, and that their very existence was dependent upon his pleasure. It had been stated that

the Council ought to be responsible, not to the Crown but to the people, and that, if such were not actually the case, it ought to be so. This he would deny in the most distinct and unqualified manner, and he defied any man in Upper Canada, or in the whole world, to maintain such a position. It was not so;—it ought not to be so. [Hear!] Suppose that the Council should be compelled to retire whenever a House of Assembly (no matter what its political character) should say it was not worthy of confidence, the right of the King to appoint the advisers of the Governor would in such case be at once destroyed. It might be said the House did not wish to dictate what particular persons should compose the Council;—but such an assertion would be mere evasion. If the House were at liberty to remove the Councillors by declaring their want of confidence in them, they could repeat their declarations until they obtained the particular persons they desired, and this would be virtually appointing them. Where, under such a state of things, would be the King's authority? The moment the House had power to say who should compose the Executive Council, that moment the kingly office and authority would be annulled, and the power and patronage of the Crown, within the Colony, would be transferred to the House of Assembly. (Hear, hear.) The hon. and learned gentleman (Dr. Morrison) might smile, as he observed he did, but he knew it could not be otherwise; and no single argument could be brought to bear against this plain and obvious truth. In favour of the new theory of responsibility to the House of Assembly it had been asked, how will you get rid of the *consequences* of any improper acts of the Governor, seeing that his removal will not make reparation to injured individuals, or restore the lives of any who may have been victims of his unadvised tyranny? But he (the Sol. Gen.) would ask how, so far as the consequences of improper acts are concerned, would the matter be amended by making the *Council* responsible, instead of the Governor? Would that restore the dead to life? Would that make good any injury that might otherwise accrue to individuals, or to the Colony? But that was not all. The responsibility contended for was a mere shadow—(hear, hear,)—a mere illusion of the fancy. The Governor was really, and tangibly responsible for his acts, and might be punished; as he should take occasion to show in the course of his argument. But how would you punish the Council? It was impossible to do so, otherwise than by dismissing them; for this obvious reason, that as they are, and must of necessity be sworn to secrecy, it would be impossible to find who among them gave bad advice, and who opposed an improper measure. Thus, the punishment, if such it could be called, must be inflicted on the innocent as well as the guilty, or all must go free. If he had not misunderstood some hon. gentlemen who were in favour of the new system, they had contended that the Council should be consulted on all occasions, but admitted that the Governor might act upon their advice, or reject it, at his pleasure.

How then would they hold the Council responsible? To be sure the late Council have said,—“We have laboured under much odium, and we wish to be allowed to tell the people that we are not guilty, when any unpopular act takes place without our advice.” Suppose this were granted, would not common candour require that they should tell the people that they did not deserve the credit of a popular act, if done against their advice? Where would be the obligation of their oath, if, contrary to it, they were thus to “respond to the people.” Such a system of responsibility might have peculiar charms for some hon. gentlemen, but it was really beyond his comprehension to perceive its propriety. Just look at the absurdity of the Council communicating with the public whenever their advice was not acted on, and telling the people—“We are not tyrants, but the Governor is a despot.” Sworn agitators! (Hear, hear.) However fond of new things reformers might be, and whatever they might declare to the contrary, they did not, they could not wish for such a state of things, if they really had the peace of the country at heart. (Hear, hear.)

It had been argued that the Executive Council is here what the Cabinet is at home. Now this was just as absurd, and betrayed the same ignorance of facts, as the declaration in the Report, that the Governor has power to DECLARE WAR! The Executive Council strictly resembled the King's Privy Council, and it might be worth while to direct attention for a moment to that body, and its powers. Some hon. gentlemen seemed to imagine that the King consults the Privy Council on all occasions; but in this they were entirely mistaken. The King could call on his Privy Council or any portion of its members for advice whenever he pleased, and they were bound to give him their assistance whenever required of them, and that too whether they agreed with the general policy of the government or not. The Privy Council, at present, was composed of a great number of gentlemen of different political views, and the King could act with or without their advice. They were altogether differently constituted from the Cabinet Ministers, which last held their offices virtually at the will of the House of Commons; but the changes of the Cabinet do not at all affect the Privy Council. The latter are bound by their oath to give their advice in any case in which it may be asked, but His Majesty is not obliged to ask it; but he may send for other persons, if he pleases, and consult them, and then act according to the best of his judgment.

During this discussion there had been various authorities quoted on the other side, and among others, that of Lord Stanley had been adduced; now, he was also willing to refer to that able and honest nobleman's opinion, given when he was a member of the Cabinet.

“—The Executive Council (he says) is a body acting in the nature of the Privy Council in this country—advising the Governor, but not responsible to him, and forming a Council against whose opinion as well as with it, he may act—and subject also to the controul of the Treasury here as auditing and passing the accounts of the Province, so far as the jurisdiction of the Treasury extends.”

So much for the opinion of Lord Stanley when a Cabinet Minister, and when it became necessary for him to inform himself of the constitutional duties and powers of the Executive Council. It will scarcely be found to favour the notion that the Executive Council are responsible to the people rather than to the Crown; and far less will it establish the opinion, that the Governor is bound by the Constitution to consult them on those affairs not specified in the Constitution or the King's Instructions, except when he may think it proper and necessary to do so. He would next adduce that of the Hon. James Stuart, late Attorney General of Lower Canada, a very eminent and able lawyer, who says, that "it would, in his opinion, be better if the Council were more frequently consulted;" but he never intimated, that the Constitution required them to be consulted on all affairs. He (the Sol. General) knew not how often the Executive Councillors were consulted on general affairs; but he knew that when they were, they were bound to give their honest advice, and the Governor had the same right to act upon it, or to decline following it, that His Majesty had with regard to the advice of his Privy Council. If this were not the case, the Governor would be the mere passive tool of his advisers, and, according to the system against which he was contending, they, the Council, must be equally the tools of the majority of the Assembly. Such a system would annihilate the kingly authority. (Hear, hear.) Such was not the Constitution of England, or of this Province; but the blind theory of the hon. member for Lenox and Addington. It was much to be lamented that hon. gentlemen did not think, and examine, before they rushed into such absurdities. It was still more remarkable that the late Executive Councillors, who had thrown the affairs of the Province into such confusion, should have imagined that, consistently with their oath of secrecy, they might insist upon being consulted upon all occasions, and then proclaim to the people the result of their deliberations. (Hear, hear.) Another argument had been adduced, which had not a little astonished him. He alluded to the reference which had been made to the administration of Governor Simcoe, who had been eulogized as the best Governor that had ever been appointed to the Province. He (the Sol. Gen.) was as ready as any other hon. gentleman to admit, that General Simcoe was a most excellent man; and he would be the last to detract from his well earned merits. When in England lately, he was highly gratified, and much affected, on observing a splendid monument which had been erected to the memory of that gallant officer, by the gentlemen of Devonshire, in the Cathedral Church of Exeter, bearing a highly honourable and appropriate inscription, and ornamented with devices commemorative of his valuable services during the American Revolution, and while Governor of Upper Canada. But could any person prove that he had administered the Government differently from his successors, in the point which was that

day the subject of debate? No, it was impossible. He would refer hon. gentlemen to the Council books, and ask them whether Governor Simcoe consulted his Council on all affairs? The result of such an examination would be fatal to the argument which hon'ble gentlemen had attempted to bring to bear upon Sir Francis Head. Look at the other public records of the Province. Governor Simcoe had assented to laws, summoned parliaments and dissolved them, issued proclamations dividing the Province into Districts, (certainly one of the most important powers ever entrusted to a Governor); and all this without any mention being made of the advice of the Council. It was probable that he might have conversed on these subjects with his old friends and companions-in-arms, by whom he was surrounded in this country, and the Councillors appointed; but it could never be shown that the Council was to assist him on all occasions: the instructions delivered to him, as has been shown, made this unnecessary. The same observations would apply to the administration of General Hunter, Mr. Gore, and indeed every succeeding Governor. Yet it was now declared, in order to bring odium upon Sir Francis Head, and to induce him, by intimidation, to yield up to irresponsible advisers one of the most important prerogatives entrusted to him by his Sovereign, that he is, in this particular, taking a stand never before assumed by his predecessors. (Hear, hear.) But bold assertions could not, in this day, be passed off on the country as facts, and hon. gentlemen would find this to be the case before this question was settled.

It had been contended, that Governor Simcoe said we had the very image and transcript of the British Constitution. He (the Sol. Gen.) would say we had more; (hear, hear;) even the Constitution itself, except such portions of it as we had refused to receive. Every part and parcel of the British Constitution that was necessary for the practical purposes of good government in this Province had been extended to it. The British Constitution, consisting of King, Lords, and Commons, each branch possessing its peculiar rights, powers and prerogatives, and the laws and institutions of the Empire, were not confined to Great Britain and Ireland,—their influence reached throughout all the widely extended dominions of the British Empire, and shed their protecting power and blessings to the remotest portion of the realms and possessions of our Sovereign: and the people of Upper Canada are as much protected by that Constitution as if they lived in an English County. Nay, more, for the British Parliament had given up a portion of its legitimate powers, and imparted them to these Colonies. Thus the Provincial Legislature had power to make laws, without any interruption or interference on the part of Great Britain, except where such laws would militate against the general interests, or any of the great constitutional principles, of the Empire. Such a check it would of course be necessary to preserve, so long as we remain a Colony.

Besides this, we are under the powerful protection of the British Crown; and were our rights to be infringed by any nation or power on earth, the arm of mighty England would at once be raised for our defence, and to protect us from injury or insult. (Hear, hear.) Yes, he would ask, who provides fleets and armies for our protection?—who erects forts and constructs canals at an expense of millions for our benefit?—who gives protection to our trade, and exclusive privileges to our commerce?—who nurses and cherishes all our institutions until we shall be able to manage and bear the expenses of them ourselves? It was the Parent State; it could not be denied that all these blessings flow from the practical working of the British Constitution, and that, so far as was compatible with our Colonial relation, we had the full benefit of that Constitution. In our local Legislature, we had the principles of King, Lords, and Commons. We had trial by jury—the habeas corpus Act—and every other privilege essential to the protection of life and property. It should be further recollected, that we thus possess the laws and protection of the British Government without its expenses; so that it is true, as Sir Francis Head has asserted, that though we may not have the exact image and transcript of the British Constitution, the only point of essential difference is as it respects its expensive arrangement and machinery.

The first act of the Provincial Legislature, which in its constitution resembles the Imperial Parliament, and is a sort of *imperium in imperio*, was to adopt all the English laws, except the Poor and Bankrupt laws; the former happily being unnecessary in a country where honest industry will generally suffice to secure a competency of wealth and comfort. The Court of Chancery, and other important institutions of England, we can have whenever we wish to avail ourselves of them. Indeed, it was clear that this Province possessed the advantages of the British Constitution, with many additional blessings, without any of its burthens.

He would now again pass to the question of the responsibility of the Government. If, by that term, it was meant that the Lieutenant Governor should be responsible to every individual in the Province, he would prove that he is so. (Hear, hear.) Yes, and he would prove in the most satisfactory manner that the responsibility contended for by some hon. gentlemen is a mere shadow, a thing of nought, compared with that which really exists, according to the laws and constitution of this Province.

As long ago as in the reign of William III. it appeared that some of the Colonial Governors did not always conduct themselves with propriety, and an Act was passed which, as it was short, he would beg leave to read:

"Whereas a due punishment is not provided for several crimes and offences committed out of this His Majesty's realm of England, whereof divers Governors, Lieutenant Governors, Deputy Governors, or Commanders-in-chief of plantations and colonies within His Majesty's dominions

beyond the seas, have taken advantage, and have not been deterred from oppressing His Majesty's subjects within their respective governments and commands, nor from committing several other great crimes and offences; not deeming themselves punishable for the same here, nor accountable for such their crimes and offences to any person within their respective governments and commands: for remedy whereof, be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the authority of the same, That if any Governor, Lieutenant Governor, Deputy Governor, or Commander-in-chief of any plantation or colony within His Majesty's dominions beyond the seas, shall after the first day of August, one thousand seven hundred, be guilty of oppressing any of His Majesty's subjects beyond the seas, within their respective governments and commands, or shall be guilty of any other crime or offence, contrary to the laws of this realm, or in force within their respective governments or commands, such oppressions, crimes, and offences, shall be enquired of, heard and determined, in His Majesty's Court of King's Bench, here in England, or before such Commissioners, and in such county of this realm, as shall be assigned by His Majesty's Commission, and by good and lawful men of the same county, and that such punishment shall be inflicted on such offenders, as are usually inflicted for offences of like nature committed here in England."

Let it be remembered, that the Act he had just read was passed when the present United States formed part of the British Empire, —when there were Legislative bodies in those colonies, similar to those in Upper Canada. But if the Executive Councils had been Cabinets, and responsible for the acts of the Governors, why was such a law passed? It would have been the height of absurdity. The Act shows plainly that the responsibility rests upon the Governor, and that he cannot be allowed to shelter himself under any pretended responsibility to his Council; *and this Statute is in force at this day.* He (the Sol. Gen.) would grant that a Governor could not be prosecuted in this country: and why? Because, as Lord Mansfield says, if he could, he might be imprisoned; and thus the colony be without a Governor, and the power and authority of the Crown be destroyed. But what of this? He can be prosecuted in England, and tried like any other individual by a jury of his country. In the year 1774 a Governor Mostyn was prosecuted, by a person of the name of Falrigas, and a verdict of £3000 rendered against him for an act which would have been, perhaps above any other strictly illegal acts, considered excusable. It was for imprisoning a man who had been accused of stirring up treason and rebellion in the colony. (Hear, hear.) Here was proper responsibility, and proper redress; and Lord Mansfield in pronouncing the judgment of the Court declared,—

"That a Governor was not that sacred character that an action would not lie against him for an illegal act committed by him within his Government—but that for many reasons, if an action did not lie against any other man, for an injury done, it should most emphatically lie against the Governor—but that he must be tried in England to see whether he had exercised the power delegated to him legally and properly; or whether he had abused it in violation of the laws of England, and the trust reposed in him."

It was not pretended that this gentleman had been advised to do what he had done by his Council; and if he had set up such an excuse it would have availed him nothing. If, however, it had been in his power to shelter himself under the advice of his Council, the consequence would have been that the man who had sustained a grievous injury would have been without any remedy,—an admirable proof of

the advantage of taking away responsibility from a Governor and placing it nominally on a Council that cannot be prosecuted. Neither are we without examples of the responsibility of Governors to individuals for injuries done them nearer home. Honourable gentlemen no doubt recollected Governor Gore; and some of them might have heard of Judge Thorpe, Mr. Surveyor General Wyatt, and others, who either abandoned their situations or were suspended by Mr. Gore for alleged misconduct. Mr. Wyatt was so disposed of, but, considering himself unjustly treated, he brought an action against Mr. Gore when in England and during the time he was on leave of absence as Lieutenant Governor of the Province, and received £300 damages against him. Many other cases might be adduced proving the responsibility of Governors for their acts, and showing that they never pretended to shelter themselves under the advice of their Council. Neither could they do so; for the laws and constitution make them, and not the Council, responsible for whatever injury may have been committed by them. They are known, tangible individuals; but a Council could not be so prosecuted—and if a party were told to seek redress from it, for an injury however enormous, he would find that his hopes of compensation were visionary and unfounded.

He would conclude this part of the subject by referring to two Acts of the Imperial Parliament showing the heavy responsibility imposed upon Governors of Colonies, and from which neither an Executive Council, nor any other power but Parliament itself, could save them. The first is an Act passed in the 7th and 8th years of William and Mary, for preventing frauds, and regulating abuses in the Colonial Trade, by the 4th clause of which it is enacted that if a Governor of any of the Colonies shall fail to do the utmost in his power to carry that law into effect, he should forfeit one thousand pounds, and be removed from his government. The second Act was passed in the 4th year of Geo. III. to prevent paper bills of credit, issued in the Colonies in America, from being made a legal tender by any Act of the local Legislature; and by the 3rd section of which it is enacted that if any Governor shall give his assent to a bill passed by a Colonial Assembly in opposition to the intent and meaning of that Act, he should forfeit £1,000, be removed from his government, and *for ever* rendered incapable of any public office or place of trust. Of what avail, he would ask, would it be to a Governor of Upper Canada, who had rendered himself liable to punishment under the provisions of either of these Acts, to plead as his excuse that he had acted by and with the advice of the Executive Council? Should such a plea save him from punishment, where would the responsibility rest then? (Hear, hear.) He might multiply proofs and authorities, but it could not be necessary. Those hon. gentlemen who wished to be influenced by honest argument and truth had heard enough, and if any were already determined as to their votes, without regard to facts or arguments, they must pursue their own course. It had been asserted that

the doctrine laid down by His Excellency was altogether novel; but when, he would ask, had responsibility been claimed at any former period of our history by the Council, or by any body on their behalf? Where was the proof of it? ("Where is it not?" from Dr. Morrison.) The hon. and learned gentleman asks, "where is it not?" He (the Sol. Gen.) was really surprised. Why was there no noise made about it last Session? Had not that hon. gentleman himself, and those with whom he acted, declared that the Council was a perfectly *irresponsible* and useless body? Perhaps the hon. gentleman has forgotten this, but his memory should presently be refreshed. When the Act was passed, making a permanent provision of £500 annually for the support of the Council, it was asked often during the debate, and particularly by the hon. member from Lenox and Addington, "What is the use of such a body, responsible to no one for their conduct?" He (the Sol. Gen.) had no doubt but those arguments would be found in the speeches of hon. members, as reported at that time in the public papers; but now they seem to have acquired new light. (Hear, hear.) To show that some changes of opinion had occurred, he would read an extract from the famous Grievance Report of last Session:—

"It appears that it is the duty of the Lieutenant Governor to take the opinion of the Executive Council only in such cases as he shall be required to do so by his Instructions from the Imperial Government, and in such other cases as he may think fit."

Now, he particularly desired to call the attention of the hon. member, [Dr. Morrison,] to the fact, that his own name, the name of T. D. Morrison, was stuck to that Report. Yes, there he was, saying the very thing which he now declares, and almost swears, is not true. (Hear, hear, and laughter.) The hon. gentleman who fabricated that Report knew well that the Council, as well as the Governor, was only responsible to the King, and that such was the Constitution.

He (the Solicitor General,) felt an unwillingness to refer to the extraordinary conduct of the late Councillors, with all of whom, except one, he had ever been, and hoped still to continue, on terms of friendship and intimacy. It was a maxim with him, never to allow political feelings to destroy private friendship; he had become perfectly callous to the attacks made upon himself by political opponents, and should never suffer them to affect him. But his public duty required him to refer to the letter which had been read in that House, and in the Legislative Council, setting forth the terms on which those gentlemen took office. It was asserted, in the Report under consideration, that that letter, as read in the two branches of the Legislature, had been altered from the original draft shown to those gentlemen by His Excellency, and that it did not contain the terms on which they accepted office. (Hear.) But, if this were true, would those gentlemen have taken office under such circum-

stances? If gentlemen, so distinguished for acuteness and deliberation, had seen additions of such importance made to the original draft, would they not have returned the letter to His Excellency, and have retired, saying—"No Sir, these are not the terms on which we accepted office?" Or if they did not wish to embarrass the Government by retiring, could it be supposed that they would have put the letter into your hands, Mr. Speaker, and in the hands of a friend and member of the other House, for the purpose of having it read, as it was by you, with much emphasis and apparent satisfaction, for the express purpose of shewing the conditions upon which they had accepted office, if it did not truly describe those conditions? He (the Sol. Gen.) was bound to assume that the assertion made in the Report, was unauthorised, because, he could not for a moment suppose that the hon. Speaker of this House would have consented to read to the House, on behalf of his most intimate friends, as an authentic document, one which he must have known was not so. He felt very sensibly the embarrassing situation in which the hon. Speaker must be placed on the present occasion, and would most gladly sit down in order that a motion might be made for the House to go into Committee, and thus allow the Speaker an opportunity to express his views on this affair. Indeed, it was most unfair in the majority of the House not to go into Committee; as by the present course, the House was deprived of the valuable legal opinions of the hon. Speaker on so important a subject. But to him (the Sol. Gen.) it appeared perfectly clear that as the Speaker was the intimate friend of the late Councillors, and had been consulted by them at every stage of the proceedings which led to their taking office, he must have been, by direct information, or otherwise, aware of the incorrectness of that letter, if it were incorrect; and therefore, if it were so, he would not have permitted himself to be the medium of communicating it to the House. Hence, he [the Sol. General] was bound to believe that that letter contained the real principles under which those gentlemen became Councillors. Now, he would ask, if they accepted office with an understanding that their advice was to be limited to those affairs on which His Excellency might feel it necessary to consult them, how could they have understood the Instructions in that unlimited sense in which they have construed them in their address to His Excellency? [Hear, hear.] There was a something of mysteriousness hanging over the whole affair which he could not comprehend.

It had been stated, that after His Excellency received the address from the Council, it was wrong for him to require them to renounce their principles or retire from office. But how could His Excellency do otherwise? He replied to them in a document in which he gave his exposition of the Constitutional powers of the Council, and then, he, in substance, said,—“Your views and mine are directly at variance on a vital principle of Constitutional law—it is impossible that

we can act harmoniously under such circumstances—you must therefore calmly weigh the views which I have laid before you, and if you cannot conscientiously accede to them, I cannot conscientiously give them up, and therefore we must part on good terms." Had His Excellency done otherwise, he would have been justly condemned.

It had been stated by the hon. member for Lenox and Addington that the Executive Council were willing to withdraw the paper they had addressed to His Excellency when they discovered the difficulties it was likely to lead to; and that it was proposed to erase it from the Council books, and that the Clerks of the Executive Council had been sworn to secrecy on the subject. All that he could say was, that if this statement was true, it involved very serious charges against these gentlemen: in the first place, he knew of no authority under which the Councillors could administer such an oath to the Clerks, and if no such authority existed, then the oath was an illegal and a profane oath; and in the second instance, the proposal to erase from the records of the Council the document they had so deliberately signed, if made as asserted by the hon. member, (which he was bound to discredit) was most reprehensible: and he must say that if such a proposal was made to His Excellency, and he had not forthwith dismissed those who made it from office, he would not have performed his duty; unless indeed they had been convinced of their error of judgment, and on that account wished to retract their opinions. To continue them as Councillors, they retaining the opinions they had expressed in opposition to the Governor would have been objectionable indeed. Suppose by way of illustration, that two or three Clergymen should write an elaborate document to their Bishop, declaring their disbelief of the great truths of Christianity, and stating their reasons, thinking thereby to convert him to their views, and that the Bishop should reply at length to their objections, and inform them if they persisted in their opinions they must be suspended, as he could not labour in connexion with persons holding such sentiments; suppose that when they see they are in consequence likely to lose their livings and be expelled the Church, they should request permission to recall their declaration, at the same time retaining their opinions. What would be the duty of their Bishop? Evidently to say, "No, gentlemen, it will not be sufficient that you withdraw the testimony of your guilt, you must retract your opinions, you must declare that they were wrong, and that you no longer retain them, before I can consent to continue you in your sacred office." Now, the affair with the Council was precisely similar. If the gentlemen were not convinced by the able, plain and kind reply of His Excellency, they were bound in honour to retire, even if not requested to do so. He had too high an opinion of the honourable feelings of those gentlemen to believe that they had proposed to withdraw their paper and continue in office, retaining the opinions they had avowed.

and he was astonished that such an assertion should be made. If true, nothing in his opinion, could more fully prove their unfitness for the confidential and honourable situation of Executive Councillors than that they were capable of making such a proposal.

A great deal had been said about His Excellency having garbled the documents sent to the Council. It appeared that, through a clerical error, the word "these" had been omitted, and on this ground His Excellency is charged with a laxity of moral principle. To say nothing of the unjustifiable grossness of this charge, it was really astonishing that hon. gentlemen could not discover, that, if His Excellency had designed to garble his extracts, it would have been as easy a matter for him to have done so the second time as the first, and thus not have exposed himself. Such accusations were no credit to those who made them. Such charges might, with much stronger semblance of truth, be brought against the authors of the Report under discussion. A most laboured effort had been put forth by the Committee to impeach the character of His Excellency in reference to the arrangement which had been made between two of the Councillors concerning the administration of the government in case of the death of His Excellency. As it respected the arrangement itself, it was altogether unnecessary. It appeared to have been made under the impression that the senior councillor must otherwise become the administrator of the government in the case supposed. But that was a mistake. When Mr. Smith was sworn into office there were two older Councillors than himself, Mr. Baby and Chief Justice Powell; neither of whom was forbidden by the Constitution to administer the Government. But no man is obliged to assume the office. He would now state the facts of this case, and leave every honest mind to judge whether there was any foundation for the abuse which had been heaped upon His Excellency. One of the Councillors, *before they were sworn into office*—(let that be remembered)—suggested that, in case of his Excellency's death, the administration of the government should devolve on the hon. Mr. Allan. To this Mr. Sullivan readily assented, being anxious to be free from so great responsibility. And to place his wish beyond doubt, it was suggested by Mr. Sullivan that a writing should be drawn and signed by him, declaring that, in the event of the Government devolving on a Councillor, he would resign and make way for Mr. Allan. This conversation took place in presence of His Excellency, who was requested to draw an instrument to that effect. He did so, and it was signed by Mr. Sullivan; and Mr. Allan received it, and there the matter rested. It was no official document,—it was not done *in Council*, nor was any record made of it. It was a *private arrangement* between two gentlemen, with respect to which the Lieutenant Governor was perfectly indifferent. [Hear, hear!] Now, what does the Report state? It states that when His Excellency was addressed by

the House for information, he intimated—(mark the expression)—he “intimated that he knew of no such agreement, and that in fact no document of such a nature *existed*.” Now, this was plainly a misrepresentation. His Excellency *intimated* no such thing; and to prove this, it will be most satisfactory to read the answer His Excellency did give to the Address of the House for information on this subject. It is as follows:—

“GENTLEMEN—I herewith transmit as much of the information desired by the House as I possess.

“I have entered into no bond or agreement, of any sort, with my present Executive Council, and I do not possess, nor does there exist in Council, any document of such a nature, between two or more of the said Council.”

This answer was in the possession of the committee at the time they made the unfounded assertion contained in their Report. Any man of ingenuous disposition—any man who was not desirous of perverting the truth, would have at once seen that His Excellency, merely wished to inform the House, that *officially* he had *no controul* over any document such as was referred to, but that he by no means intended to convey the idea, that “no document of such a nature existed;” on the contrary, he very plainly intimated the reverse, and to prove that he had no objection to its being made public, and that he was ready to assist in its disclosure, he permitted Mr. Sullivan to appear before the Committee and state every thing he knew respecting the matter. Had His Excellency desired concealment he could have prevented this: and the Committee would then have been left without this new topic, upon which to assail the Lieutenant Governor. But, as an honest man, he had no desire to conceal truth—all he asked, was, that the truth should be plainly told, and no false interpretations placed upon it. Much stress was laid upon Mr. Sullivan having expressed an unwillingness at first to state who drew up the document. But why was he unwilling? Undoubtedly, because he suspected the dishonourable use that would be made by the Committee of that information. (Hear, hear.) But it would be a mere waste of time for him to attempt further to show how utterly impossible it was for any imputations to be fairly cast upon the character of His Excellency with regard to that transaction. What he had said had not been for the sake of convincing the Committee, or those who were already determined to sustain the Report, and all the slanders contained in it; but to show to the country the real nature of a transaction which had been so shamefully misrepresented, for party purposes. (Hear.)

He had detained the house a long time, but he hoped that the vast importance of the subject would form for him a sufficient apology. He had felt a deep and thrilling interest in the question before the house, and although he had no doubt as to the course which the majority would pursue, and that it would be of no avail for him to argue against the decision which had been already determined on, yet that regard which every patriotic man must feel for the prosperity of the country in which the interests of himself and his posterity are at stake, rendered it impossible that he should say less than he had. The subject was an exciting one, but he had endeavoured to confine himself to a deliberate consideration and calm discussion of its true principles and merits, and of those prominent features of the Report which, from their connexion with the main question, seemed to possess some importance. He hoped that he had accomplished what he proposed at the commencement of his observations. He had noticed the

origin of the Executive Councils—he had pointed out their legitimate functions, and how far their existence was identified with the Constitution. He had shown the real responsibility of Colonial Government; and had made it obvious that the system advocated by the late Council and in the Report, if indeed it might be called a system, would completely remove that responsibility from where alone it could safely rest, and would introduce in its stead a merely ideal responsibility, subverting the best interests of the country, and annihilating in it every vestige of British rule. (Hear, hear.) And now he would close his remarks by expressing his deep regret that men should be found occupying the important and distinguished places of representatives of a patriotic people, who could abuse the trust committed to them, and avail themselves of their parliamentary privileges to traduce the character, and misrepresent the conduct, of as honest, upright, disinterested, straightforward, able, and truly patriotic a man as ever was entrusted by Britain's Monarch with the government of any Colony of the Empire,—(Hear, hear, hear.)—a man whose only study was to maintain alike inviolate the prerogatives of his Sovereign, and the indefeasible rights of the people, (hear, hear;) whose most ardent desire was, to carry out in all their extent the benevolent designs of one of the most indulgent and patriotic Kings that ever wore the British Crown, (hear, hear;) and who still would persevere in accomplishing the important work entrusted to him, amidst all the obstacles which might be thrown in his way. (Hear, hear.) Yes, such was the individual against whom all the vituperative language of that laboured Report was directed;—such was the individual who, it might be almost said, immediately on his arrival, is accused of crimes and offences which, if true, ought not only to depose him from his exalted office, but ought for ever to close against him the door of civilized society. (Hear, hear.) He would not give that man credit for much strength of understanding, or honesty of principle, or goodness of heart, who would not decide that there was some other object kept in view, by the framers and advocates of that Report, than the investigation of constitutional principles. It spoke not the calm and dignified language of virtuous patriotism, but that of an unworthy and factious attempt to embarrass the administrator of the Government. That would be traced by every candid man in almost every paragraph, and it would produce in the country a very different effect from that which the supporters of it appeared to anticipate.—(Hear, hear.) He supposed that hon. members were resolved, however, to try the experiment. Well, let them do so. They had of course power to stop the supplies necessary for carrying on the Government in an advantageous manner; but there was another power from which theirs was derived; and it was for the people to decide whether it was for the peace, welfare, and good government of the Province that the Courts of Justice should be impeded in their important proceedings,—that the public offices should be shut up, and that the industrious farmer and mechanic should suffer from the suspension of all internal improvement. Yet such every hon. member knew must be the inevitable result of stopping the supplies.

But this, notwithstanding all the evils that would result from it, would undoubtedly be done; and then efforts would be made to persuade the country that it was done from a regard for their rights and interests. (Hear, hear.) But the people would not believe it; there was too much intelligence in the country for such a deception to be practised upon its inhabitants. There was no Colony that possessed the power and the advantages which had been entrusted and granted to Upper Canada, for the benefit of those patriotic men who were among its first inhabitants, and who risked their lives, and

sacrificed their property, in defence of British principles; yes, many of them had fought and bled for the sake of the privileges which they then enjoyed under merely chartered governments. But the British Government, with that nobleness by which it has ever been distinguished, generously decreed a reward to their loyalty by increasing and greatly extending the privileges they had previously enjoyed, and conferred upon this Province that constitution which it was the object of the Report under consideration to subvert and destroy under the false pretence of supporting it. [Hear, hear.] Yes, the object could not be concealed, and the country will pronounce an equitable sentence on its authors and abettors. The powers entrusted to the Colonial Legislature were never intended to be exercised in the manner now contemplated. It never was supposed that an effort would be made to withhold the necessary supplies for carrying on the Government, because of a difference of opinion having arisen between the Governor and the majority of the House on a constitutional question;—and on a question which the Imperial Government alone could decide. What was the meaning of such a step? It was saying most distinctly, not to the Governor, for he had not power to grant what was demanded of him, but to the King, “Unless this question be decided according to our dictation we will refuse to co-operate with the Government, we will array ourselves against the constitutional powers of the King’s representative, or in other words, against the King himself.” (Hear, hear.) Such was the language spoken by the measure, and although it might be denied, it could not be disproved. A certain system is laid down by our Reformers in the Assembly, and it is designated *responsible government*;—it is asserted that it is the system acknowledged by the constitution, and the Governor is required to act upon it. He dissents, and states that he cannot view the constitution in that light, and therefore cannot, in accordance with his oath, administer the government on such principles; but he points to the imperial government as the only tribunal competent to award a decision, and to that decision he declares himself willing respectfully to bow. Why then does not the House wait for that decision? If hon. members were willing to abide by it, and to uphold the Constitution as it exists, why stop the Supplies? Such a step is evidently an attempt to intimidate the Government, and it loudly declares to the King, “you must either decide that our construction of the constitution is right, or you must make such changes as will accord with the system we have demanded; and if you will not, we will not be governed by you.” [Hear, hear.] Suppose the Government should decide that that system cannot be established without destroying all colonial dependency, what then must be done? The answer was obvious:—but there were more than 150,000 men, loyal and true, within this province, who would never consent to have the authority of the Sovereign trampled under foot; and never, without their concurrence, could the moral power of the Government be put down. [Hear, hear.] If the refusing to vote the Supplies would not open the eyes of the people, they would deserve to be slaves;—not the slaves of the British Monarch, for such a relation could not exist within the boundaries of his Empire,—(hear, hear,)—but the slaves of the present majority of the House of Assembly, whose eager grasping after uncontrolled power sufficiently proved how utterly disqualified they were for possessing it. [Hear, hear.] He was but an humble individual, and stood in a minority in that House; but, of that minority he was proud on the present occasion,—and he felt assured the cause he and his estimable friends were now advocating would be found to be the cause of the people, and that he was expressing the views of those who

constituted the worth, and the intelligence, and the patriotism of the country. Whatever might be the result of that evening's discussion, and he had no expectation but that the Report would be adopted, it would afford him unmixed satisfaction to the latest period of his life, that he, and his respected friends around him, had lifted up their voices, and recorded their votes, against a measure so fraught with most disastrous consequences to the Province, and so directly at variance with every principle which ought to find a lodgment in a Briton's heart. (The hon. and learned gentleman resumed his seat amidst loud cheers from the crowded galleries, and the space below the bar.)

MR. ROBLIN said, that, with regard to the document which had been spoken of between Mr. Sullivan and Mr. Allan, he was as well satisfied as any thing could be, when the Governor's reply was read, that he had been misinformed; and he was very much astonished when Mr. Sullivan told the committee there was such a paper.— But it is argued there is no such paper in Council. That was a way of getting along that he was not used to. But, leaving that matter, he would come to the question of responsible government. The constitution recognized "such Executive Council as shall be appointed by His Majesty for the affairs of the Province," and therefore he argued that the Act created an Executive Council. The hon. and learned Solicitor-General stated that the Report said the Governor should consult the Council upon all the affairs of the Government. Now, it said no such thing; but the Royal Instructions said so, and also that the senior Councillor should administer the government in case of the death of the Governor. The simple question was, Ought we not to have a responsible Executive Council in this Province? Why not? He could not see how it was going to curtail the prerogative of the Crown, as it had been argued. Was the Lieutenant-Governor to have more power than the King himself? (Hear, hear!) He had an Executive Council, just as the King had his Privy Council; and from the Privy Council the King selected his Cabinet Council, whose advice he was to take upon all affairs of the government. (Hear, hear!) Whenever they gave advice, the King acted in accordance with it, so long as he retained them in office. The acts of the Government were the acts of the Council, and in that way their opinions went forth to the country. But, if they did not suit the views of a majority of the representatives of the people, the Council must go out of office; for it was contrary to all the principles of good government that two bodies should be constituted to act together who at the same time held views contrary to each other; just as the good book said, a house divided against itself could not stand. It was not required that if the Governor advised with the Council he should act with that advice; but it was wished to know who did any thing for the good of the country and who did not. If they were paid £500 a year, he would like to know what good they did for it. If they

gave the Governor advice and he did not please to act according to it, the House of Assembly wanted to know it, that in such case the matter might be submitted to the decision of His Majesty's Government. If they say, we approve of your course, and you may dismiss your Council, he would of course do so. He takes another; but they cannot agree with the people. Here we are at a stand, and obliged to recur to first principles, and ask for what purpose governments were instituted, if it was not for the good of the people? That should be the foundation of all governments, the welfare of the people. And were not the people of Upper Canada to be the judges of what was for their own good, and what was not? or was the Colonial Minister at 4000 miles distance to be judge of what was for our good, and tell us, "You must swallow whatever I please to cram down your throat, whether you like it or not?" These were his opinions on government, and he was satisfied that on no other principle could it exist. While the people of this Province could look to other countries where government was thus administered, they would not be contented so long as the present state of things existed here, and while the rights enjoyed by others were denied to them. If the Governor could not agree with the Representatives of the people, they being a factious set of fellows like the present House of Assembly, let him dissolve them and appeal to the people. Should he do this, and a majority of the same sentiments be again returned, what was to be done? Could we get on in this way? Surely the British Government had no desire, and could have no interest, in persisting to govern this Colony in a manner contrary to the wishes of its inhabitants. The hon. and learned Solicitor General had told the house in pretty plain terms that it was unconstitutional to stop the Supplies; but they had the opinions of Mr. Stanley and Lord Glenelg against the opinion of the hon. and learned Solicitor, which he was inclined to think was quite as good authority. If a Governor was sent out here, who, under all the circumstances, could not administer the government according to the wishes of the representatives of the people, he (Mr. R.) would say, give us another Governor or another House of Assembly. He had thought seriously upon the question of withholding the supplies, and had come to the conclusion that it was best to do so at the present time; for then they would bring matters to an issue at once, and see who was right. The question of course would be referred to His Majesty's Government; and they would have to recal the Governor or turn out the Assembly as often as they were elected, until they agreed.

The Executive Council ought, in his opinion, to be responsible to the people; he would not take upon him to say they were so at present, but they should be so, that it might be known who it was that gave the advice by which the Government was conducted. At

present it was never known whether it was by the advice of the Council, or some other persons, or whether the Governor acted as he pleased himself. His Excellency had provoked this discussion, and "dragged the question into day-light;" and in one of his documents he had admitted that he should advise with his Council, for he says he cannot divulge which of the members of his Council advises him, which plainly implied that he should consult them. If he agreed with the Council, he might in his public documents say, "I have done so with the advice of my Executive Council;" or, "on my own responsibility," if he disagreed with them. There was nothing in his oath which in his (Mr. R.'s) opinion prevented him from doing this, although he might not divulge which of the members gave him the advice by which he acted. His Excellency says, "whenever embarrassment requires it he must draw upon their sterling fund," meaning their advice; that is, he will in ordinary affairs think and act for himself; but whenever, perhaps by his own unadvised mismanagement, the affairs of the government get into embarrassment, he will ask their advice, that they may bear all the odium of the measures he has pursued. Then, he goes on to say, "if they faithfully honour his bills, they fulfil their duty to their oath, their Sovereign, and to him." What he meant by honouring his bills, he, (Mr. R.) being a plain farmer, might not understand so well as some others, but he believed it meant this,—when one merchant draws a bill upon another, his friend pays it according to instructions received from the drawer; and His Excellency must, therefore, mean that if the Council approved of the "remedial measures" which he told the House he was preparing, they discharged their duty. He could not agree with His Excellency in this limited interpretation of the powers and duties of the Executive Council as they were set forth in the Constitutional Act and the King's Instructions, for the latter say, "You are to communicate to them such and so many of these our Instructions, &c. and all such others from time to time as you shall find convenient for our service." What did the word *convenient* mean, upon which so much stress had been laid? Not that it would be *inconvenient* to ask their advice upon all occasions; but the better to enlighten their judgments and inform their minds, in order that "impartiality" might be assisted by "knowledge," he should communicate to them the views of His Majesty's Government as often as he might find it convenient to enable them to come to a judicious and proper decision. That was what he considered the word "convenient," in the Instructions, to mean. The Governor, at the conclusion of his reply, tells the Council, that "to the opinions they have expressed he can never subscribe." What were those opinions? Not that they might be allowed to tell the advice they gave, but simply to inform the public when they advised a measure and when they did not. But no, he tells them he will not allow them to do so; "The coun-

try shall not know whether you advised me in the course I have pursued or not."

The adoption of the resolution before the House would decide the question whether the Supplies were to be stopped or not. To do so he acknowledged was a strong measure, it was the last resource; but what was to be done? That House and the Country had addressed His Majesty's Government for the last four or five years, setting forth that there was no Established Church in Upper Canada, and praying that there might be none established and endowed, but that the Clergy Reserves might be devoted to general education. But how had they been respected or answered? In the last year no less than fifty-seven Rectories had been established and endowed out of those Reserves. Were they to grant the Supplies and again address His Majesty and say, "We pray your Majesty this system may not be continued?" (Hear.) No; if there ever was a time, or if there ever could be a proper time, to stop the Supplies, it was now. Let His Majesty's Government be plainly told, "if you will not attend to our representations, we will not support your Government;" that was the meaning of stopping the Supplies, and he hoped would wake them up to pay attention to our affairs. Whether his constituents would approve of the vote he was about to give, he could not tell; but it never had been any advantage to him to be a representative of the people, and he was willing cheerfully to retire into private life, if the people would not support him in taking what he willingly acknowledged, was a bold stand—a very important step, but which he thought, all the circumstances of the times required. He had, however, made up his mind on the subject, and was prepared to vote for withholding the Supplies.

Mr. PARKE observed, that the principal arguments against a responsible Executive Council in this Province seemed to be, that it would destroy the power of the mother country in the colony. But it should be remembered that England, when she passed our constitutional act, reserved to herself the power of regulating our trade and commerce, and retained in her hands the whole patronage of the government. For what was this done? To maintain her controul over the affairs of the colony. But that she should exercise any such controul through the Executive Council, was never intended when the act was passed. That Council was not appointed by any law, but by the principle upon which all laws were founded, that of safety and protection against oppression; and to take away that check over the Executive Government would be the very essence of tyranny. The Government of Upper Canada must be administered by an Executive Council responsible to the House of Assembly; for it never could be intended by the people of Great Britain, that their fellow subjects in Upper Canada should be degraded into the condition of slaves. The Governor, we were told, was responsible to

Downing Street ; but had they ever been called to account for tyrannizing over the people ? No ; but they were praised when they exercised their power for the interest of those who appointed them. The hon. and learned Solicitor General said the powers of the Executive Council were derived from the King's Instructions ; but he (Mr. P.) contended that he had no right to give such instructions without Act of Parliament. [Hear, hear.]

MR. NOTTON.—After the very severe castigation which the hon. and learned gentleman from Cornwall (Mr. McLean) has been pleased to bestow upon me for the crime of having been born in the United States, it may be considered presumption in me to say one word upon a subject of this nature. I will give the hon. and learned gentleman all the advantage, and all the honour that he is entitled to, for having made the discovery that a man was disgraced in consequence of his birth-place. I have seen, Mr. Speaker, men, nay even hon. and learned gentlemen, whose conduct was a disgrace to the high station they held, to themselves and to the country that gave them birth ; [hear, hear.] but that the country should disgrace the man, is a discovery left for no less an honourable, noble, and generous personage than the gentleman from Cornwall to make. That man who is so lost to the noblest feelings of our nature, as not feel a glow of pride at the mention of his native land, is indeed only fit to become the base and abject slave of such a man as the hon. and learned gentleman has upon this occasion shown himself to be. The law in your Statute book, Sir, has made me eligible to a seat in this House, and the spontaneous and united voice of as intelligent, patriotic, and loyal a people as Upper Canada can boast has done me the honour to send me here, and they expect that I will do my duty to my God, my King, and my Constituents ; and, Sir, I shall not shrink from the task upon this occasion, notwithstanding the sneering taunts, which no gentleman would make, but which could have emanated from no other than the hon. and learned member. [Hear, hear.] The hon. and learned gentleman says, grievances are preached continually, which are sickening to the ear—I doubt not, Mr. Speaker, but such cries are sickening to the ears of the hon. gentleman, but was he ever known to lend a helping hand to redress those grievances, has he not invariably denied that there existed any grievances ? He has been pleased to laud the people of this Province for their intelligence and discrimination, and warned the majority of this House that the people were too intelligent and too enlightened to be duped by any artifice, from asserting and maintaining those just rights. Pray, sir, how long since that hon. and learned gentleman has made the discovery ? Has he not invariably opposed every measure giving the people a voice in the management even of their local affairs ? Has he not invariably scouted the idea of consulting the people ?—If the records of your journal since the first day of his taking a seat in the House of Assembly, answer the question, among the specimens of his regard for the people you will find his support for the celebrated Gagging Bill, preventing these enlightened and intelligent people from meeting and petitioning for a redress of these grievances. [Hear, hear.] No surer proof however can be given of the march of intelligence in the county which he formerly represented, than that the people very plainly told him they had no further need for his valuable services. [Hear, hear.] With regard to the question before you, the hon. and learned Solicitor General, (the only hon. gentleman opposed to it, who had undertaken to use any argument,) had really made

out our case most admirably. The whole drift of his argument was to show us that the Executive Council of this Province was exactly similar to that body in England called the Privy Council, and he has quoted several authorities to prove this fact. Well, Mr. Speaker, what else do we contend for; this is all we have ever asserted, and we complain that although a similar body, and constituted for similar purposes, yet they cling to office after having entirely lost the confidence of the people. Yet while the Solicitor admits that we have the "very image and transcript of the British Constitution," His Excellency denies it,—[hear, hear,]—and he is the first person in the Province who has ever done so. Those very hon. gentlemen, who now say it would be the greatest curse that could be inflicted upon this Province, if we had responsible Executive, should refresh their memories before they so loudly proclaimed their own inconsistency. Did not our Address to His Majesty in the last Parliament, respecting the Banks, declare, in the most emphatic language, the necessity of a responsible Government? did not that address receive the support and the vote of every member in that House? Let us come a little nearer the present period: let hon. gentlemen look at the Resolution upon which an Address was founded to His Excellency on the 14th of last month, upon the subject of the late Council, which reads as follows:

"Mr. Perry, seconded by Mr. Chas. Duncombe, moves that it be Resolved, That this House considers the appointment of a responsible Executive Council to advise the Lieutenant Governor, or person administering the government of the affairs of this Province, to be one of the most happy and wise features in our Constitution, and essential in our form of government, and as being one of the strongest securities for a just and equitable administration of the government, and full enjoyment of our civil and religious rights and privileges."—[Hear, hear.]

Now, Mr. Speaker, this resolution was adopted after a whole day's debate, and upon which there was a call of the house, and when there were fifty-five members present, (the fullest House we have had during the present session,) and when the yeas and nays were called for, the only members found to oppose it were Messrs. Boulton and Malloch. [Hear, hear.] But, sir, when these hon. and learned gentlemen found that such was not the opinion of Sir F. B. Head, they immediately change their colours, [hear, hear,] and now denounce this very principle as the most absurd and wicked principle ever agitated in this House. What are we to think? What will the public think of such men and such conduct? I will ask hon. gentlemen to satisfy their own consciences and the country for this (to use the mildest term) most gross and flagrant inconsistency, and dismiss from my mind the humiliating reflections which their conduct has created. During the whole discussion, not one argument of my hon. friend from Lenox and Addington [Mr. Perry] has been answered: sir, they are unanswerable, as well as those of my hon. friend from Prince Edward [Mr. Roblin.] I trust, Mr. Speaker, that I feel deeply the responsibility of this day's proceedings, of the vast import-

ance of the question now before us. We have arrived at a most critical juncture in the history of this Province. The fate of this measure doubtless decides whether we are to enjoy the "very image and transcript of the British Constitution," or whether we are to have a mutilated and degraded one; whether we are to have a constitutional and responsible government, possessing the confidence and affections of the people, or whether we are to be governed by the arbitrary will of an irresponsible vacillating Executive. We are called upon to protect the sacred rights and privileges for which the brave U. E. Loyalists nobly struggled and nobly bled. Those rights and privileges which are the palladium of our liberties, one of the foremost pillars in the British Constitution. Those rights and privileges which form the basis of every free and enlightened government throughout the world, viz. responsibility to the people. [Hear, hear.] When therefore shall this house assert with independent dignity, a resolute and unequivocal declaration of those sacred rights and privileges secured to us by that Constitution, which, from our earliest infancy, we have been taught to reverence and obey? When, I say, shall we stand forth in its defence, but in the instant of its most imminent danger? Low indeed shall we be placed in the scale of human nature if we quietly suffer ourselves to be longer governed by a secret, unknown, and unconstitutional influence, base in itself as it is treacherous in its consequences. An administration such as this can only receive the support of those who know no higher and more noble principles to actuate their conduct, than the aspiring to or obtaining some office of emolument, and who are willing to obtain and hold them by no worthier tenure than secret influence. Every true friend to his country cannot but admit, however, that a responsible Government, possessing the confidence of the people, is the only government that can secure the country against the infinite abuses so natural to the possession and exercise of power. Should we unfortunately ever become so unmindful of our interests as to suffer this great bulwark of our Constitution and of our liberty to be wrested from us, we should soon become the miserable and abject slaves of a secret despotism. So long as the Governor is guided by a secret, intriguing, underhand influence, the Executive Council act the part of puppets to some unknown juggler behind the screen. [Hear, hear.] They are not allowed to consult their own opinions, but must pay implicit homage to those whom they know not, and perhaps whom but to know were but to despise. [Cries of hear, hear, hear.] The only rule that guides them is a secret mandate which carries along with it no other alternative than obedience or ruin. What man, who has the feeling, the honor, the spirit, or the heart of a man, would stoop to such a degraded condition for any official dignity or emolument whatever. The Council who would act so dishonorable a part, and the country that would submit to it, would be mutual plagues and curses to each other. What, sir, is the distinction between an absolute and a limited monarchy but that the sovereign in the one is a despot and may do what he pleases; while in the other, he is himself subjected to the laws, and consequently not at liberty to advise with any one who is not responsible for that advice. The prerogatives of the Crown are by no means to be exerted in a wanton and arbitrary

manner. The good of the whole is the exclusive object to which all the branches of the Legislature and their different powers invariably should point. It is undoubtedly the prerogative of the Crown to select the Council, but to secure the blessings of good government that Council must possess the confidence of the public. That Governor must be bold indeed, who dares to despise and reject the voice of the people, and short must be the duration of that administration that is not upheld by the popular will. Is there an individual here who feels for his honour, so lost to every honourable, every patriotic feeling, so regardless of his dearest and most sacred rights and privileges, as to feel callous and indifferent in such a crisis as this? If there be, then I say that man is unworthy to enjoy, because he cannot duly appreciate the blessings secured to him by that Constitution which has been the glory and the pride of ages. Sir, I fear not the result of this most important crisis, I feel confident that the characteristic spirit of British subjects is still equal to the trial. I trust they will feel as jealous of secret influence as they are to open violence. (Hear, hear.) I trust they are not more ready to defend their interests against foreign depredation and insult than to encounter and defeat this midnight conspiracy against the constitution. We are now deliberating on the life and blood of our constitution. Give up the point of responsibility to the people, and we seal our own quietus, and are accessory to our own insignificance and destruction. Though we have been most unjustly deprived of our just weight in the constitution, yet if we acquit ourselves honourably to our constituents, to our friends, to our own consciences, and to the public, whose trustees we are, and for whom we act, we shall come out of this struggle honourably and triumphantly. I have too much confidence in the justice and the magnanimity of the British Government to suppose for one moment that they will oppose our wishes—wishes founded so strong in justice, and so dear to our best interests. Whoever wished for the liberty secured to us by the constitution. Whoever wished for good government, whether he be a whig or a tory, conservative or radical, they should equally unite in wishing for the removal of the present administration, because until this is done there can be neither freedom of constitution nor energy of government. I have seriously reflected on the course I ought to pursue upon this momentous question, and I deliberately declare, that I have never in my life supported any measure with a firmer conviction of duty. (Hear, hear.) The glorious cause of freedom, of reform, of civil and religious liberty, and of the constitution in its purity, ever has, and ever shall receive my deliberate support. Thus far this course has borne me up, under every aspersion to which my character has been subjected. The resentment of the mean, the aversions of the great, the rancour of the vindictive, and the subtily of the base, the dereliction of friends, and the efforts of enemies have never succeeded in diverting me from what I believed to be my conscientious duty.

[Mr. Norton's speech is copied from the Correspondent and Advocate, and the Reporter of the Guardian perceives that the commencement of it is a reply to some remarks made by Mr. McLean which were not heard by him, and therefore do not appear in the report of that gentleman's speech.]

Mr. ROBINSON said, he supposed he would be the only member for the Home District that would vote against the resolution, and therefore would take the liberty of making two or three remarks. The differences on this question had been called "a matter of dry law," but it would not appear to be a very dry subject to any one who had attentively listened to the speech of the hon. and learned Solicitor General. It was a speech full of argument and historical information. He thought it was so utterly impracticable to have an Executive Council responsible to the House of Assembly, that it could never have been the intention of His Majesty's Government that such a responsibility should exist. He must say, that when he has heard these measures brought forward under the name of Reform, he always feared they did not intend Reform but Revolution. The history of all Revolutions would show the specious names by which those measures were called which finally thus terminated. (Hear, hear.) With regard to withholding the Supplies, hon. members should ask themselves before doing so, whether the end would justify the means. He thought not. So much had already been so well said, that he would not take up any more time.

Mr. PERRY remarked, that the hon. gentleman before he sat down, observed that so much had been said on his side of the question that it was useless for him to say any thing more. Now, in the name of common sense, what had they said to support the position of His Excellency? Was it any thing said by the hon. and learned member for Hamilton? His arguments were, that some members of the majority of that house had been made Captains of Militia and Justices of the Peace. But his hon. friends from Dundas and Stormont (Messrs. Shaver and Chisholm) when they were appointed were great Tories, but they saw their error and left the ranks of the Tories, because they saw it was a wicked system. Indeed, the minority seemed broken down in spirit as well as argument during the discussion. The only thing on which they seemed to be animated was concerning the remark he made, that the junior clerks of the Council were sworn to secrecy, which they said was unlawful, &c.; but there was no law which required the senior clerk to be sworn, and yet it was well known that he was. What then had they made of it? Then they seemed to turn into ridicule what he (Mr. P.) said about the Governor having power to declare war; but what did the King's Instructions to the Governor say? "You shall not make war." Were hon. gentlemen satisfied now? (Hear, hear, and laughter.) That was just what he expected from ignorance. "You shall not make war *except in some special emergency.*" Did not that very exception give him the power? Most certainly it did. Had it been shown that there was any difference between the oath of the Executive Councillors here and the Privy Councillors in England? The Privy Council and the Cabinet Council were the same;—all the members of the Privy Council were not Cabinet Councillors, but all Cabinet Councillors were Privy Councillors. They were not properly two offices; but the Cabinet Councillors held the seals of office so long and no longer than they retained the confidence of the people. There was not one letter of the law which required the King to take the advice of

the Cabinet Council, yet it was invariably done; and what he contended for was, that the practice pursued in England ought to be followed in this Province.

MR. MERRITT wished to say a few words on this question. It was a matter of great importance; but he did not agree with the sentiments of any hon. members who had spoken on it. The late Council say, they wish the course to be pursued which they proposed, in order to prevent the adoption of other measures uncongenial to the constitution of the country; and the majority of the house pursued the same means to attain a different end. There was some inconsistency here which he could not comprehend. He neither entirely approved of the measures of the Governor nor those of that house. It was constitutional and right to refuse the Supplies when it was necessary to do so; but he did not think it was necessary in the present stage of the question; for he was satisfied that if they would calmly and temperately discuss it, and point out the remedy, they would obtain it. It was admitted he believed on all hands, that some change was necessary; but there was difference of opinion respecting what that change should be. He found fault with the Colonial Office for dismissing the Crown Officers; and he was of opinion that there were too frequent changes at that Office, and not that stability in our Colonial Government which was necessary for the public good. They dismissed officers for the expression of their opinions. We also saw persons go home and make representations about our institutions, for instance the representations that were made by a certain individual concerning our Banking Institutions, and these were adopted and attempted to be forced upon us to the ruin of the country. Such things should be prevented. If that house would make such representation to England as he had mentioned, he thought they would get the change desired; but if they adopted the Report and stopt the Supplies, he could see no good that would result from it. They were going on in the same track as Lower Canada, and would get into the same difficulties, which they could not tell what would be the end of. He was satisfied this course of conduct would not result in the good of the country. He was constrained to vote against the Report, and could not consent to withhold the Supplies.

MR. DURAND said, that when the hon. and learned Solicitor-General got up, he (Mr. D.) expected that he would dissect the Report, and tear it all to pieces. The hon. and learned gentleman said he had taken notes, and that he would give it a showing up. But what had he done? He had made a long speech with nothing in it. He had attempted to defend the Governor in the course he had taken; because, no doubt, the hon. and learned gentleman had whispered in the royal ear as a secret adviser. At the beginning

of the Session the hon. and learned gentleman had said he was willing to go all lengths to meet reformers ; but, when he found he could blow into the royal ear, he turned round, and said he had not yet reached his meridian. The Report before the House was an important and able one, and when it reached England it would procure redress of the public grievances. It would show that the House was determined to take a firm stand. A good deal had been said against stopping the Supplies, but that was the only remedy which the representatives of the people had in their hands. He would repeat what he had before said, that this was the most important measure that had been discussed this Session, and reformers would now get their rights. The Tories, who opposed the Report, were completely foiled, and were afraid to come up to the scratch. The great question was, Shall we have responsible government or not ? He hoped we should, and for that reason he would support the Report. He was not afraid to go back to his constituents, and tell them he had done his duty. The Tories were the persons who had reason to be afraid. If the country should decide against him, he could not help it. He had not come here from personal choice, or for his own interest, but to promote the good of the country ; and he should vote for the resolution, because he believed it was his duty to do so.

Mr. RICHARDSON rose amidst loud cries of "question." He said, if he were not in the minority he should not hear so much clamour on rising, from those who were afraid of discussion. He thought as it was late, the debate ought to be adjourned. (Confused cries of "hear, hear," "go on," &c.) It was now proposed to stop the supplies ; but was it just to those who were opposed to that measure, to bring on the question when it was only 48 hours to the close of the session, and therefore not time to discuss it ? (More confusion.) His opinion most decidedly was, that these proceedings were carried on in concert with the Papineau party in Lower Canada, in order to effect a change in our Constitution and break off the connexion with the mother country. (The cries of "question," "hear him," "go on," "go a-head," coughing, &c. increased to such a degree that the hon. gentleman could not be heard, and was obliged to sit down.)

Mr. Perry's amendment was adopted, and on the original question as amended, the yeas and nays were taken as follows :

YEAS.

Messieurs **ALWAY,**
BRUCE,
BUELL,
CHISHOLM,
COOK,
DUNCOMBE, of Ox-
ford,
DUNCOMBE, of Nor-
folk,
DURAND,
GIBSON,
GILCHRIST,
HOPKINS,
HOWARD,
LOUNT,
McDONELL, of Stor-
mont,
McINTOSH,
MACKENZIE,
McMICKING,
MOORE,
MORRISON,
NORTON,
PARKE,
PERRY,
ROBLIN,
RYMAL,
SHAVER,
SMALL,
THORBURN,
WATERS,
WELLS,
WILSON,
WOOLVERTON,
YAGER,—32.

NAYS.

Messieurs **BOULTON,**
BROWN,
CALDWELL,
DUNLOP,
LEWIS,
McCRAE,
McDONELL, of Glen-
garry,
McDONELL, of Nor-
thumberland,
McKAY,
McLEAN,
McNAB,
MALLOCH,
MERRITT,
RICHARDSON,
ROBINSON,
RYKERT,
SOLICITOR GENERAL
STRANGE,
THOM,
WALSH,
WILKINSON —21.

John Smith

Majority for the Adoption of the Report, sending it and the Memorial to England, stopping the Supplies, &c.—11.

Montreal